



**Education law, schools, and school principals:  
A mixed methods study of the impact of law on  
Tasmanian school principals**  
by  
**Allison Jane Trimble, BA/LLB B.Teach (Hons)**

Thesis Submitted in Fulfilment  
of the Requirements for the Degree of  
Doctor of Philosophy

University of Tasmania

July 2017

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### **Abstract**

This study reports research conducted in Tasmania concerning the impact of legal issues on school principals across the government, Catholic and Independent school sectors. The research focused on the areas of principals' legal literacy (encompassing the legal areas they deal with, the accuracy of their legal knowledge and their legal confidence, and sources of legal support) and legal consciousness; the legal context faced by principals; negative impacts of their legal dealings, and ways principals consider their legal support might be improved. While some findings accorded with previous Australian studies (McCann, 2006; Stewart, 1996), several identified new perspectives on school principals' dealings with legal issues.

The research design was a concurrent triangulation, quan + QUAL, mixed methods design, based on an on-line survey of Tasmanian principals and a series of semi-structured interviews with a range of people working in Tasmanian education, including principals, principal supervisors, senior system leaders, administrators and a government education lawyer. This study was the first of its kind in Australia to begin to address the experiences of Independent school principals together with their colleagues from other systems, as well as providing a more complete and rounded picture by including the views of practising principals and other informed perspectives.

In terms of principals' legal literacy, the findings largely reflected the previous Australian research. Data revealed that principals deal with a broad range of legal areas, but their legal involvement primarily focusses on matters involving the safety and security of students and their families, and staff. Based on discrimination law questions posed in the survey, participants' legal knowledge was assessed to be limited (mean accuracy of 53%). However, that provided only part of the picture. It was concluded that participants' legal knowledge should be considered in light of their legal support network, legal confidence (which may affect a willingness to seek advice), and legal consciousness. The data revealed considerable reliance by principals on their own legal understandings, as well as that of colleagues, which may be appropriate for routine issues within a stable legal environment, but possibly problematic for non-routine matters within a dynamic legal context. Further, the data revealed considerable reliance by many school leaders on decision support from experienced specialist advisers, and lawyers. It was found that principals from less well-resourced schools within the Independent sector may not have access to such support.

Legal consciousness is a concept adapted from Law and Society, involving beliefs *about* law, held by non-lawyers. The interview data revealed a series of such general ideas held by participants, especially concerning defences or shields to prosecution: *If I do A, because of B, then that's OK legally*. In several instances these beliefs were not legally accurate. The study also made findings regarding the internal and external legal environments of school organisations, from which legal claims, requirements and pressures arise, and with which principals must deal. The study proposed some extension of the previously accepted organisation theory model of school and the law (Lunenburg, 2010; Lunenburg & Ornstein, 1991; Stewart, 1996).

The issue of negative impacts of dealing with legal issues has previously been addressed in education law research in terms of principals' stress, and the time demands of legal matters. This study also examined time costs and legal stress, but recognised other negative impacts, including the cost of legal advice and the impact of skewed risk management. When the focus turned to suggestions for improving legal support for principals not all participants felt change was needed. Many of the findings involved ways to improve principals' preparation and development. Interestingly, some participants also raised the legal training of pre-service teachers as ultimately affecting the principal's responsibilities to students and staff.

## **Dedication**

This PhD is dedicated to my parents, George and Florence Trimble, and my wonderful son, Alex Hyslop, who always believed I could, even when I didn't think so.

## Acknowledgements

Firstly I wish to acknowledge the patience, understanding and good humour with which my supervisor, Professor Neil Cranston, has guided me through the PhD process. He has always been available to support me through the sticky bits, and provide the gentle pressure needed to get me back on track when my aim has been unclear. I could not have asked for a better supervisor, mentor and colleague.

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In addition I wish to thank my editor, Dr Megan Kimber, who undertook the copyediting and proofing of my thesis. Naturally, the errors in this thesis are all my own.

The support provided to my research by the Tasmanian Principals’ Association, Independent Schools Tasmania, and the Tasmanian Branch of the Australian Heads of Independent Schools Australia was invaluable; I am very grateful for their efforts in publicising the study. I would also thank the Victorian Branch of ANZELA for the bursary award that permitted me to attend the 2015 Conference.

Finally, I would like to thank all the Tasmanian school principals, network leaders, system leaders, administrators and lawyers who participated in my research. They gave so generously of their time, and experiences; quite literally, without their participation I would have had nothing to report.

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**Glossary of Terms**


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AITSL	Australian Institute for Teaching and School Leadership.
ANZELA	Australia and New Zealand Education Law Association. Not-for-profit association with the aim of bringing together academics, legal practitioners, educators and others who have an association with and/or interest in education law and legal issues affecting education.
<i>Charter</i>	<i>The Australian charter for the professional learning of teachers and school leaders: A shared responsibility and commitment</i> published by the Australian Institute for Teaching and School Leadership.
CPD	Continuous professional development. Process of on-going professional learning.
DoE (Tasmania)	Tasmanian Department of Education provides educational services to students in Tasmania. Manages and administers government schools up-to and including Grade 12.
EA	Educational advantage. A term used by the Australian Curriculum Assessment and Reporting Authority in relation to the levels of socio-educational advantage of a schools' student population relative to other schools.
Education law	"Those areas of jurisprudence that bear on the operation of ... schools." (Alexander & Alexander, 2011, p. 2). An equivalent term to <i>school law</i> used in Canada and the United States.
FOI	Freedom of information. Legislative process empowering individuals to access government documents. Often linked with privacy.
HREC	The Human Research Ethics Committee.
IST	Independent School Tasmania. An association of non-government schools which co-ordinates views of member schools in submissions to government and other bodies, and advises and supports member schools at their request.
Legal decision support	Advice and information provided to school principal to assist with making legal decisions.
Legal knowledge test	Group of items in education law survey which require participants to answer legal questions, in order to demonstrate the accuracy of their education law knowledge.
Legal support framework	Interlinked and comprehensive legal resources available for consultation by a school principal. It may include a principal's own and colleagues' knowledge, law manual, system and school policies, hierarchical superiors, functional specialist advisers, and lawyers.

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**Glossary of Terms**


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<i>National Statement</i>	The <i>National statement on the ethical conduct of human research</i> published by the National Health and Medical Research Council, the Australian Research Council, and the Australian Vice-Chancellors' Committee.
Principal network leaders	Experienced DoE former principals responsible for advising a network of government schools.
<i>Professional Standard</i>	The <i>Australian professional standard for principals</i> published by the Australian Institute for Teaching and School Leadership.
RQ	Research question.
School principal	Includes school head, headmaster, headmistress etc. Refers to the leader of a school established or registered under the Tasmanian <i>Education Act 2016</i> or previous legislation.
TCEC	The Tasmanian Catholic Education Commission. This body is appointed by the Archbishop and is the overarching strategic planning and policy making body for Catholic education in Tasmania.
TCEO	Tasmanian Catholic Education Office provides support for 37 Catholic schools and colleges across Tasmania.
UTAS	University of Tasmania.

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## Chapter 1

### Introduction

This chapter introduces the study, *Education law, schools, and school principals: A mixed methods study of the impact of law on Tasmanian school principals*. Following a brief discussion of the research area and topic of the research, the chapter presents an overview of the contextual background, as well as the extant body of literature against which the study was initiated and conducted. The chapter defines the central research problem and specific research questions drafted to address the problem. It then proceeds to discuss the research design, the significance of the research and its limitations, and closes with a summary of the remaining chapters of the thesis.

### Research Area and Topic

The *research area* within which this study was located is education law<sup>1</sup>, that is, “those areas of jurisprudence that bear on the operation of ... schools.” (Alexander & Alexander, 2011, p. 2) In Australia, the field of education law research is composed of two broad streams of interest. One of these streams is generally law-based, examining the application of particular areas of the law to the education context. The other is education-based, focused more on the impact of law on educational institutions and actors. This study was education-focused. The *research topic* on which it was based was the impact of education law on school principals.

### Background of the Study

#### Education law in schools.

The importance of law and legal issues in the working lives of school principals, and the operation of their schools, has never been higher (Lock & Lummis, 2014; K. Taylor, 2012; Teh, 2014). Whether a principal is dealing with a complaint about disability discrimination, counselling staff for unprofessional conduct, reporting a case of a student’s neglect or abuse, managing the school’s copyright exemptions, ensuring photographs in promotional materials have appropriate permissions, or assessing the risks of an out-of-school activity, the school

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<sup>1</sup> *Education law* is the term generally adopted in Australia (e.g., Mawdsley & Cumming, 2008), and equates with *school law* ( e.g., Berlin, 2009; Zirkel, 2009) more commonly adopted in the United States and Canada.

principal's education law decisions are critical to the safety and welfare of students, their families, and members of staff, as well as the smooth and effective operation of the school (Eberwein, 2008; Starr, 2012; Wagner, 2007). The importance of school leaders' legal knowledge has been recognised nationally in Australia in recent years through its inclusion as a central aspect of principalship practice under the *Australian professional standard for principals* (the *Professional Standard*) (Australian Institute for Teaching and School Leadership, 2012b).

Over time, and particularly more recently, the educational environment within which Australian school principals practice has become increasingly legalised. School leaders now face an ever-expanding range of legal issues, areas of law are becoming more complex, and there is a widely-held perception that school stakeholders, internal and external, increasingly turn to the law to settle disputes (D. Butler & Mathews, 2007; D'Cruz, 2016; P. Williams, 1994, 1995). At the same time, principal preparation and development in education law — across all three education sectors — may not have kept pace with the growing legal demands. School leaders in Australia and other jurisdictions have generally been found to possess a low level of legal literacy, despite (in some cases) their unwarranted level of confidence in their own legal knowledge (Findlay, 2007b; McCann, 2006; Stewart, 1996b). For routine legal matters which require a standard response or continuation of the status quo, this level of legal literacy may not present great difficulties. However, when principals are required to deal with non-routine legal matters, their reliance on past experience or the advice of a colleague principal, perhaps coupled with some reticence about seeking expert advice, may prove problematic (E. Collins, Percy, Smith, & Kruschke, 2011; Heyden, van Doorn, Reimer, Van Den Bosch, & Volberda, 2013; Meissner & Wulf, 2014). In such circumstances, the availability of accurate legal advice through a legal support framework, particularly legal advice from a qualified legal adviser, together with a willingness to accept advice, is crucial. Further, the legal decisions taken by school principals may not always depend solely on their knowledge *of the law*. School principals may also, or instead of, be guided by their legal consciousness *about the law*. The beliefs embodied in this legal consciousness may not always reflect the formal provisions of the enacted law. (W. Butler & Grier, 2012; Halliday & Morgan, 2013; Silbey, 2008).

The legal element of contemporary principalship creates high levels of stress for many school leaders (Dewa et al., 2009; Klocko & Wells, 2015; Robbins, 2013; Stewart, 1996b). As the findings from this study show, this legal stress is contributed to by deficits in their own legal

understandings, but may also be exacerbated by other aspects, including: the financial costs of legal advice; time consumed in dealing with legal problems; the degree to which legal issues distract from the principal's central role as the school's instructional leader (Christie, 2005; Ross & Cozzens, 2017; Southworth, 2002); and impacts on the educational experiences of students.

### **The empirical research base.**

Australian research concerning the impact of education law on the working lives of school principals is limited. Two major studies have been undertaken, by Stewart (1996b) and McCann (2006), both located in Queensland. Whilst not the earliest education law research pursued in this country, Stewart's (1996) survey-based inquiry was the first to comprehensively examine the legal burdens borne by government school principals. That study was followed up a decade later by the McCann (2006) research, which largely replicated the Stewart methodology but focused on the experiences of Catholic school principals. In addition, a small-scale study was conducted by the researcher in Northern Tasmania in 2011, with government primary school principals (Trimble, 2011; Trimble, Cranston, & Allen, 2012). That research produced some findings of interest, although its very small sample size constrained its generalisability.

The empirical knowledge base regarding school principals and education law in Australia has changed very little in the more than two decades since Stewart (1996) reported his findings, even though the legal landscape within which principals practice has altered noticeably. Nonetheless, the Stewart (1996) and McCann (2006) studies provided important background for the present research, revealing themes that might benefit from further investigation, highlighting gaps in the existing knowledge base, and establishing an organisation theory basis for the operation of education law in schools (Stewart, 1996b; Stewart & McCann, 1999).

### **Research Problem**

The research problem, described as "the essence of the study" (Ayiro, 2012, p. 83), narrows the research topic and guides the need to conduct the research. The research problem at the centre of this study was based on limitations and silences in the existing education law research and literature. The current knowledge base does not include recent changes in the legal environment of schools after 2006 in any comprehensive way, nor does it address the impact of education law on Independent school principals, or the particular legal issues facing school principals in Tasmania. As such, the impact of education law on government, Catholic and Independent

school principals in Tasmania in schools required investigation, particularly in relation to legal literacy and legal consciousness, the legal context of principalship, negative impacts from their dealings with legal matters, and possibilities for improving the situation as perceived by educators themselves.

### **Purpose Statement**

Simon (2011) suggests the purpose statement informs the reader of the primary goal of the research, explaining what the study will accomplish in order to address the research problem. The purpose of this mixed methods study was to explore and describe the impact of education law on government, Catholic, and Independent school principals in Tasmania.

### **Research Questions**

The next step in the increasing narrowing of focus from research area to research topic and further downwards (Ayiro, 2012; Cresswell & Plano Clark, 2011; Punch, 2009), concerns the specific questions to be examined in the study. In this study, a general overarching question was developed, together with specific research questions and sub-questions, as set out in Figure 1.

Overarching Question:

What impact does education law have on Tasmanian school principals?

Research Questions and Sub-questions:

1. What is the legal literacy of Tasmanian school principals?
  - 1-1. With which legal areas do Tasmanian school principals have dealings?
  - 1-2. What level of legal knowledge do Tasmanian school principals hold?
  - 1-3. What sources of legal information and advice do Tasmanian school principals consult?
2. What is the legal consciousness of Tasmanian school principals?
3. What is the legal environment faced by Tasmanian school principals?
4. Do Tasmanian school principals recognize any negative impacts from dealing with legal matters?
5. How do Tasmanian school principals suggest their education law support be enhanced?

*Figure 1. Research questions and sub-questions for study.*

## **Research Design**

This research study used a mixed methods methodology, within a philosophical paradigm supplied by Deweyan Pragmatism. A concurrent triangulation, mixed methods design (Cresswell, Plano Clark, Guttman, & Hanson, 2003; see also Alavi & Habek; Tashakkori & Teddlie, 1998) was developed to address the research questions. The design consisted of two main phases that were conducted partly concurrently. Those phases were composed of quantitative data collection, analysis, and findings; and qualitative data collection, analysis and findings. For reasons explained in Chapter 4, the qualitative phase was given priority over the quantitative phase. Data for the study were collected using an on-line survey for school principals, developed by the researcher but based on instruments used in previous research, together with semi-structured, in-depth interviews conducted by the researcher with school principals, principal network leaders, senior system leaders, administrators, as well as an education lawyer.

Copies of the following important documents relating to the study are set out in Appendices A–F:

- Ethics approvals (Appendix A).
- Institutional approvals (Appendix B).
- Participant information sheet and consent form (Appendix C).
- On-line survey text (Appendix D).
- Initial interview schedules (Appendix E).
- Revised interview schedules (Appendix F).

## **Research Justification**

### **Research added to knowledge.**

This study contributes to the existing body of knowledge in relation to school principals and education law by: providing findings about school leaders working in a jurisdiction and an education system which had not previously been studied comprehensively; addressing emergent issues not previously examined; and by considering aspects of principals' dealings with legal issues recognised in previous research but not updated to reflect the current schooling context. Further, the study provides contemporary findings against which the earlier research can be considered. A table setting out the limitations of previous Australian research into the impact of

education law on school principals is at Appendix G. This extension to the body of education law knowledge enables persons interested in both school leadership and education law to better understand the impact of legal issues on the principalship. In addition, it adds to the body of professional knowledge supporting education law as a separate field of academic interest.

### **Research improved practice.**

This study enables Tasmanian school leaders to reflect on the accuracy of their personal legal knowledge and to take remedial action to improve their legal understandings. As far as the study suggests improvements to the legal support framework for principals, implementation of its recommendations may facilitate earlier legal decision support for principals, minimising the costs of legal action in terms of principals' time and stress.

### **Research informed policy.**

This study provides baseline information to educational policymakers regarding the impact of education law on the principalship in Tasmania, across all three sectors. Such information has not previously been available.

## **Limitations of the Study**

### **Survey participant selection and sample size.**

Participants in the survey phase of the study were self-selected, based on their awareness of the study and their personal decision to respond. The non-random nature of this sample limited the types of statistical tests appropriate to analyse the closed-ended survey response data to descriptive statistics. In addition, the non-probability nature of the survey sample limited the generalisability of the quantitative findings. The limited sample size in the survey (34 responses from a population of 261 Tasmanian school principals) constituted a low response rate. While issues of low response bias do not strictly apply to non-probability samples, the low response to the survey further mitigated against wider generalisation of the study's findings. The comprehensive qualitative phase of the study in large part compensated for this lower-than-hoped-for survey response rate.

**Knowledge test.**

Participants who responded to the survey were given an opportunity to answer a number of True/False/Don't Know questions (items 25, 27 and 29) in relation to Tasmanian disability, sexual and racial discrimination law. The questions were based on the provisions of the *Anti-Discrimination Act 1998* (Tas). The answers were used in part to assess the accuracy of participants' legal knowledge. This approach has been applied in previous Australian research and in almost every reported study from the United States and Canada — although the content and form of the questions has varied. The weight that can appropriately be given such findings is however limited, for a number of reasons: participants may have had only minimal experience and training in the relevant legislation; knowledge about one particular area of the law does not necessarily apply to other legal areas; and the on-line nature of the survey meant that participants could have consulted a more expert source to determine the correct answers. As such, the findings regarding the legal knowledge accuracy of Tasmanian school principals is of interest, but should be treated with a degree of caution.

**Range of interview participants.**

The researcher initially hoped to interview several education lawyers who provide professional advice to Tasmanian principals, schools, and systems. However, despite numerous requests, it only proved possible to interview a legal officer from the Tasmanian Department of Education (DoE) Legal Services unit who advises government school principals throughout the State. Whilst that interview was extremely valuable, it may have been useful to compare that interview data with the experiences from education law practitioners in private law firms who advise Catholic and Independent schools and their principals.

**Thesis structure**

This thesis is organised into nine chapters comprising the Introduction; Literature Review; Conceptual Framework; Methods; Research Question 1 – Quantitative Findings; Research Question 1 – Qualitative Findings; Research Questions 2, 3, 4, and 5 Findings; Key Findings and Discussion; and Conclusions and Recommendations.

**Chapter 2 — Literature review.**

Following the Introduction, the literature review in Chapter 2 discusses and critiques the available Australian and overseas (largely United States and Canadian) literature concerning the



impact of education law on school principals. The review of existing literature is structured to reflect the study's research questions: legal literacy, legal consciousness, legal context, the negative impacts of legal dealings, and suggested improvements. Chapter 2 identifies limitations and silences within the existing body of knowledge that are, at least in part, addressed by the present study.

### **Chapter 3 — Conceptual framework.**

The conceptual framework chapter builds on the open-system perspective on schools and the law proposed by Lunenburg and Ornstein (1991), and Stewart (1996b; 1999) to provide a model of the school and its internal and external legal environments that reflects contemporary organisation theory.

### **Chapter 4 — Methods.**

Chapter 4 explains the mixed methods methodology of the study as well as the researcher's adoption of a Deweyan Pragmatic paradigm, and her position on the incommensurability issue. The chapter goes on to provide a detailed discussion of the study's mixed methods research design, and the data collection, analysis, and integration.

### **Chapter 5 — Research Question 1: Quantitative findings.**

This chapter of the thesis details the survey findings in relation to the first research question, regarding Tasmanian school principals' legal literacy. The findings address the areas of law dealt with by principals; the accuracy of principals' legal knowledge, and their confidence in that knowledge; and the sources of legal information they consult.

### **Chapter 6 — Research Question 1: Qualitative findings.**

Chapter 6 outlines the qualitative findings in relation to the first (legal literacy) research question. The findings were based on a series of semi-structured interviews with a range of Tasmanian education figures, as well as qualitative responses from the on-line survey. The structure of this chapter reflects the preceding chapter.

### **Chapter 7 — Research Questions 2, 3, 4, and 5: Findings.**

This chapter presents the quantitative and qualitative findings made in relation to the remaining research questions, concerning legal consciousness, legal context, the negative impacts of legal dealings, and suggested improvements in legal support.

### **Chapter 8 — Key findings and discussion.**

Chapter 8 of this thesis again uses the study's research questions as an organising framework.

The chapter discusses key findings from the study in light of the extant education law literature, previous empirical studies conducted both in Australia and North America, and the open-system model of schools' legal environments, as set out in Chapter 3.

### **Chapter 9 — Conclusions and recommendations.**

This final chapter reiterates the purpose and design of the research and the conclusions drawn from the study. It goes on to outline both the significance and the limitations of the study, and makes recommendations for further practice, policy, and research.

## Chapter 2

### Literature Review

This chapter reviews the available literature concerning the impact of education law on Tasmanian school principals. It is structured to reflect the research questions and sub-questions posed in relation to this study:

- principals' legal literacy (areas of law, legal knowledge and confidence, and sources of legal information);
- principals' legal consciousness;
- the legal environments principals face;
- negative impacts flowing from principals' legal dealings; and
- ways in which principals' legal support might be improved.

The structure is represented in Figure 2. The chapter reviews academic scholarship relating to these topics as well as previous relevant studies originating from both Australia, and the United States and Canada. All these jurisdictions have well-established traditions of education law research. The focus of previous Australian doctoral research in education law is outlined in Appendix H.

This review and analysis of the literature underpins the conceptual framework presented in Chapter 3. The conceptual framework supports a model of schools and their legal environments, from which legal issues in schools arise. That model is central to this study. The literature review also contextualises the research methods described in Chapter 4 and informs the findings, discussion and conclusions set out in Chapters 5 to 9.



Figure 2. Structure of literature review chapter.

**Research Question 1 — What is the Legal Literacy of Tasmanian School Principals?****Legal literacy.**

As with other forms of literacy that have emerged in recent decades, the precise definition of legal literacy remains contested (D. Young, Kraglund-Gauthier, & Foran, 2014). The concept was originally described by J. White (1982-1983; see also Zariski, 2011) as involving legal capacity spread along a continuum with lawyers and judges at one pole, and incapable laypersons at the other. This notion of graduated capability provides a useful perspective for considering the legal literacy required by school principals. The disputed issue, however, remains the ideal and the actual degrees of principals' legal literacy and any shortfall between them.

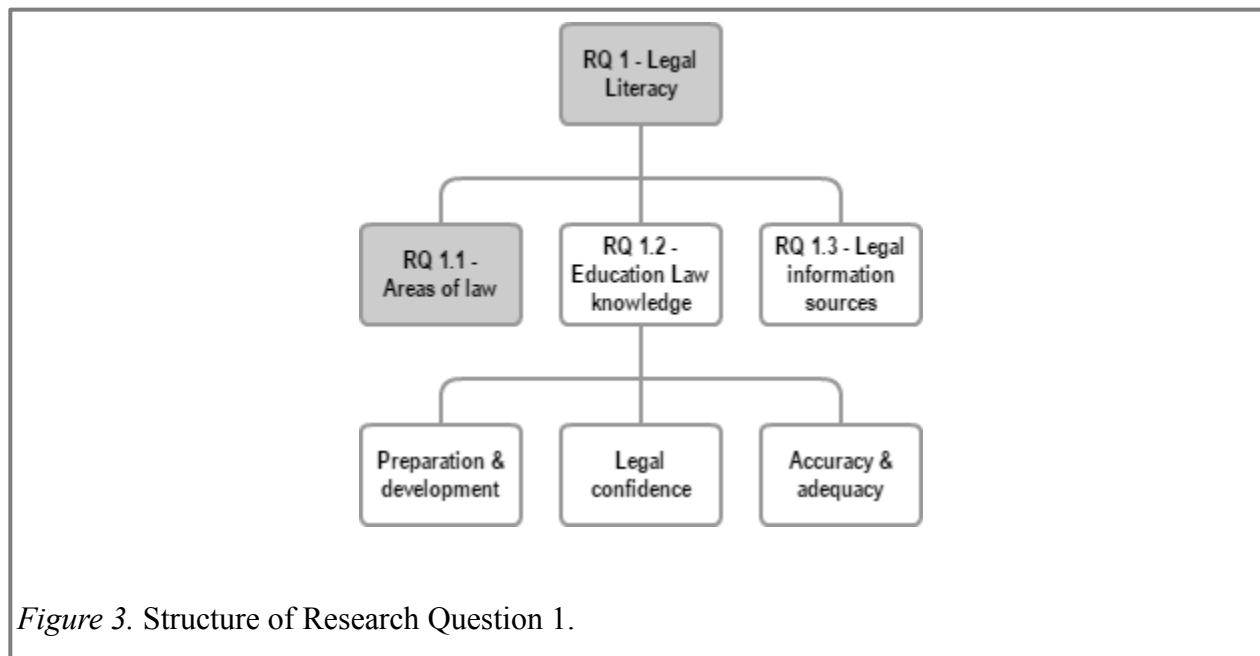
Some guidance about the desirable level of legal literacy for school leaders is available from the literature, although there remains debate. A number of authors define school principals' legal literacy relatively narrowly, by limiting it only to knowledge. For example, Zirkel (2006) advocates for "accurate, effective and useful knowledge among educators" (p. 494), while K. Taylor (2010) refers to "sufficient knowledge of legal obligations to carry out school policy and procedures and maintain safety in the school environment" (p. 8). Others have broadened the focus by introducing an understanding of legal consequences. D. Young et al. (2014), for example, refer to the application, synthesis and critical analysis of legal information, and the *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012b) requires that principals:

Have knowledge of relevant national policies, practices and initiatives as well as relevant federal and state legislation, agreements and policies. They understand the implications of child safety, health and well-being, human resource management, financial management, accountability and other legislative and policy requirements in relation to serving their community and broader society. (p. 7)

There is also a view that is wider again which incorporates knowledge of education law, an understanding of its application, and judgement of the need for expert legal assistance. Walsh (1997) suggests that a school leader should have a broad understanding of the law as it impacts schools, an appreciation of the concept of law, and an ability to know when to seek further advice. Stewart's (1997) formulation is similar, "A level sufficient to identify when a legal

problem is developing in their school and the knowledge and skills required to manage that problem” (p. 43). That position was adopted in this study.

In considering the legal literacy of school principals, it has become widely accepted, both in Australia and overseas, that research should examine a number of critical topics including the areas of law that principals deal with, their level of legal knowledge, and the information sources principals consult in dealing with legal issues in their schools (Eberwein, 2008; Findlay, 2007b; McCann, 2006; Stewart, 1996b). Those topics are represented in Figure 3.



### **Research Question 1.1 — Areas of education law dealt with by principals.**

#### ***Literature.***

Gerstein and Gerstein (2004) use a memorable analogy to preface their text on education law, stating:

Education law is like a salad made by mixing different legal ingredients. Nearly every field of law affects educational institutions in some way. Contract law, tort law (wrongs such as negligence), constitutional law, civil rights law, sports law and disability law form the basic framework of education law. (p. xix)

However, the salad recipe is not fixed. Rather, it varies over time and between jurisdictions. An aspect that contributes to its constant evolution is the fact that, apart from education-specific

legislation, education law borrows its content from other legal fields (Mawdsley & Cumming, 2008; Rishworth, 1996) and is directly influenced by legal developments in those areas.

***Australian research.***

The seminal Australian research on education law and school principals was conducted by Stewart in his 1996 study. That research addressed the areas of law with which participants had dealings (Stewart, 1996b). However, the research methodology and the survey design somewhat limited the usefulness of the resulting data. Nonetheless, Stewart found that, “Government schools in the Australian state of Queensland were shown to be commonly involved with nine major statutes, although fourteen others were identified as affecting school operations” (1998a, p. 131). In addition Stewart (1996b) found that a majority of his participants had been affected by some element of common law or criminal law in the management of their schools. Data from Stewart’s study are set out in Table 1.

Table 1

*Comparison of Areas of Education Law Dealt with by School Principals*

Areas of Law	Stewart (1996)	McCann (2006)	Trimble (2011)
<b>Statutes</b>			
Workplace health & safety	✓	✓	✓
Education Act	✓	✓	
Freedom of Information (FOI) / Privacy	✓	✓	✓
Anti-Discrimination	✓	✓	✓
Family law	✓	✓	✓
Criminal justice	✓	✓	✓
<b>Additional statutes</b>			
Employment law	✓	✓	
Student work placements	✓		
Local government	✓	✓	
Copyright	✓		
Financial management	✓		

Areas of Law	Stewart (1996)	McCann (2006)	Trimble (2011)
Traffic	✓		✓
Aboriginal & Torres Strait Islander students	✓		
Homeless persons	✓		
<b>Common Law</b>			
Physical injury	✓	✓	✓
Defamation	✓	✓	
Intellectual property	✓		
<b>Criminal law*</b>			
Break & enter/ property damage	✓		
Theft	✓		
Assault/ indecent dealing	✓		
Illegal substances	✓		
		Trade Practices law/ contracts	Child welfare
		Dangerous weapons	Racial discrimination
		Negligent teaching	Immigration law

Note: Data drawn from *School principals and the law: A study of the legal knowledge needed and held by principals in government schools in Queensland* by D. Stewart, 1996, PhD dissertation, Queensland University of Technology, Brisbane, QLD; *Principals' understandings of aspects of the law impacting on the administration of Catholic schools: Some implications for leadership* by P. McCann, 2006, PhD dissertation, Australian Catholic University, Melbourne, VIC; *Tasmanian school principals and education law: An exploratory study of the legal knowledge held by government school principals in Tasmania* by A. Trimble, 2011, B.Ed. Honours thesis, University of Tasmania, Launceston, TAS.

\*The absence of data from the McCann and Trimble studies in relation to specified crimes results from coding differences, where listed crimes are included within the broader category of criminal justice.

When McCann (2006) replicated the Stewart (1996b) study a decade later with a sample population of Queensland Catholic school principals, his use of the Stewart survey instrument resulted in findings which were similarly structured to those reported by Stewart, as set out in Table 1. In 2011 the researcher undertook a small exploratory study into the impact of education law issues on government primary school principals in Northern Tasmania (Trimble, 2011). That study combined a number of legal topics to produce a more condensed view of the areas of education law with which the participants had dealings (see Table 1).

In the Stewart (1996b) study, the most commonly identified issues (in decreasing order) were: workplace health and safety; education, freedom of information (FOI) and anti-discrimination; Family law; common law (negligence); and crime. The McCann (2006) findings were similar, with the areas nominated by the largest proportion of participants as: workplace health and safety; Family law; common law and crime. The 2011 study generally confirmed the previous research, with Family law, child welfare, employment issues, crime, and negligence (duty of care/personal injury) being the areas most commonly identified by participants. Although these results showed an amount of variation, reflecting jurisdictional and participant differences, they generally indicated that the areas of law dealt with by most Australian school principals involve the safety and welfare of school students and their families, and staff.

***International research.***

From an Australian perspective, the American education law knowledge base appears overwhelmingly huge. Indeed, Eberwein (2008) compiled a list of 78 separate studies, and the numbers have increased since then. Although many of these studies examine issues not relevant to the topic at hand, several have considered the areas of education law that are important to school principals, as shown in Table 2.

Table 2

*American and Canadian Research on Areas of Law Dealt with by School Principals*

Areas of law	United States studies			Canadian studies		
	Hillman (1998)	Magone (2007)	White (2012)	Anderson & Fraser (2001)	Leschied et al. (2007)	Findlay (2007)
AIDs	✓					
Disciplining students & due process	✓	✓	✓			
Environmental legislation	✓					
Teacher evaluation	✓	✓				
Hazing, bullying, violence	✓	✓	✓	✓	✓	✓



Areas of law	United States studies			Canadian studies		
	Hillman (1998)	Magone (2007)	White (2012)	Anderson & Fraser (2001)	Leschied et al. (2007)	Findlay (2007)
Religion	✓		✓			
Disciplining staff	✓	✓			✓	
School finance	✓					
Special education	✓	✓	✓		✓	
Student & teacher rights	✓				✓	✓
IDEA & discrimination		✓	✓		✓	
Student supervision/ negligence		✓	✓	✓		✓
Student supervision/ negligence		✓	✓	✓		✓
Child welfare		✓	✓		✓	
Search & seizure			✓			✓
Student freedom of expression			✓		✓	
Teacher employment & contracts			✓			
Family custody & access					✓	✓
Teacher misconduct				✓		
Access to information/ privacy					✓	✓
Educational malpractice				✓		

Areas of law	United States studies			Canadian studies		
	Hillman (1998)	Magone (2007)	White (2012)	Anderson & Fraser (2001)	Leschied et al. (2007)	Findlay (2007)
Drug misuse						✓

Note: US data drawn from *School administrators' legal knowledge: Information sources and perceived needs* by S. Hillman, 1988, Paper presented at the AERA conference, New Orleans, LA; *Education law priorities and need: A comparative analysis* by M. Magone, 2007, Ed.D. dissertation, University of Montana, Missoula, MT; *An assessment of the level of school law knowledge of South Carolina principals and the implications for litigation and social justice* by D. White, 2012, Ed.D. dissertation, University of South Carolina, Columbia, SC. Canadian data drawn from "Protecting our students (and their teachers too): A Canadian perspective", by S. Anderson and S. Fraser, 2001, *Australia and New Zealand Journal of Law and Education*, 6(1), 55-85; "Assessing educators' self-reported levels of legal knowledge, law-related areas of concern and patterns of accessing legal information", by W. Leschied, G. Dickinson and W. Lewis, 2000, *Journal of Educational Administration and Foundations*, 15(1), 38-77; "In-school administrators' knowledge of education law", by N. Findlay, 2007, *Education Law Journal*, 17(2), 177-202.

In an early study, Hillman (1988) listed 11 areas of law that school administrators felt were most pressing. Almost two decades later, more than half of the, "essential areas of school law for principals" reported by Magone (2007, p. 68), overlapped with those identified previously. White's listing (2012) again highlighted new issues, although the majority of areas reflected earlier research. Table 2 also presents information from a number of Canadian studies. The research reported by Leschied, Lewis and Dickinson (2000) involved both teachers and principals, and presented areas of legal concern nominated by participants. The study by Anderson and Fraser (2001) was not directly on point, but was included because it enumerated risks to school students and staff, and a primary responsibility of school principals lies in the prevention of harm to the school population. The third Canadian study, by Findlay (2007b), collected data from in-school administrators (principals and deputies) and identified the legal areas relevant to their work.

Several points can be drawn from Table 2. Firstly, in considering a topic like the areas of law that impact on schools, the way the researcher codes the data is of fundamental importance. Some of the headings in Table 2 address similar legal issues, for example, teacher rights, discipline, staff, teacher misconduct, educational malpractice, and teacher evaluations. However, because the various studies did not structure their findings on a common template, the results are not expressed consistently and probably present greater variation than may be the reality. Secondly, some matters are clearly of concern at a particular juncture but may lose prominence over time, for example, the AIDS concerns of the 1980s, whereas other issues have ongoing

relevance. Thirdly, when Constitutional guarantees of individual rights are put to one side, there is considerable commonality between the legal issues dealt with by North American school principals and those which concern their Australian colleagues. Such areas include: duty of care (including abuse and neglect); employment (including workers' compensation, occupational health and safety, teacher registration and workplace relations); discrimination (including race, disability, gender, sexual orientation, and pregnancy); criminal law (including drugs, assault, bullying, theft, property damage, search and seizure); and privacy and access to information. This suggests that, notwithstanding the differences in areas of education law between Australia and the North American jurisdictions, principals in both places have many legal issues in common.

***Summary — Research Question 1.1 Areas of education law dealt with by principals***

A summary of the literature regarding the areas of education law dealt with by principals is at Figure 4.

The areas of law which constitute education law are not fixed. They vary over time and between jurisdictions, in response to the particular legal issues that arise in schools. Notwithstanding jurisdictional differences, there are several legal areas which may be considered central to education law, sharing a common focus on the safety and well-being of students and their families, and school staff.

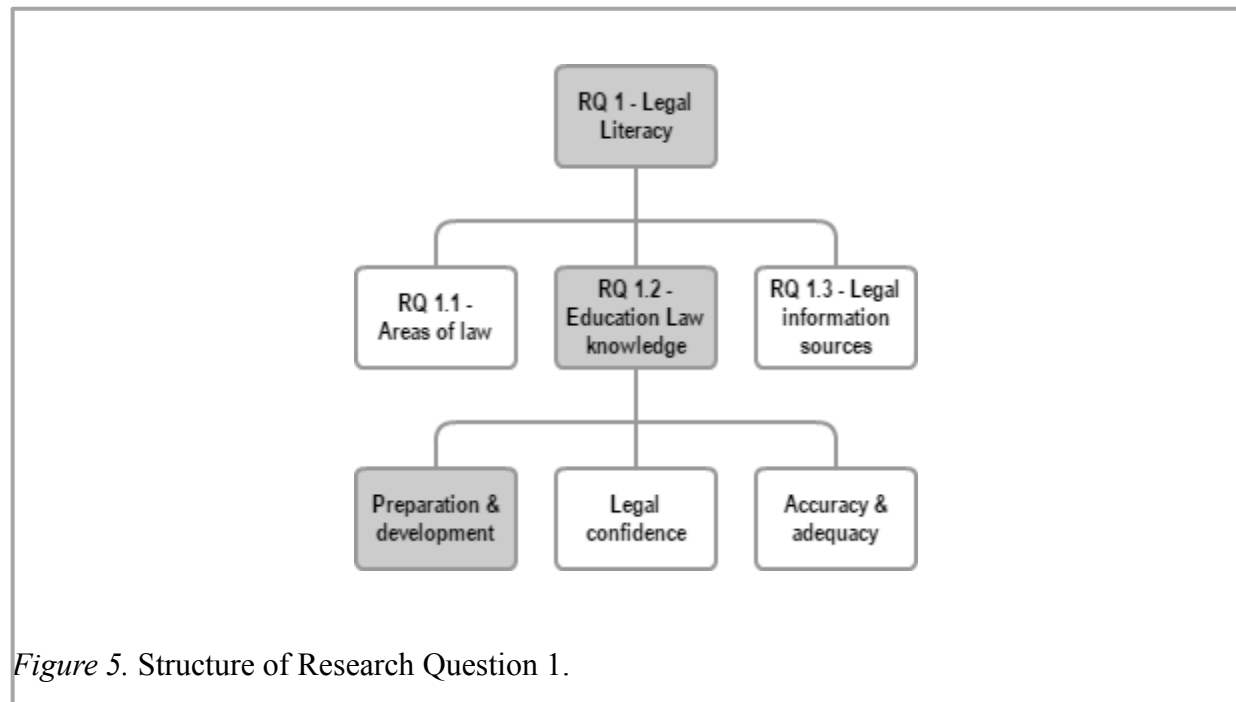
*Figure 4. Summary of Research Question 1.1.*

**Research Question 1.2 — Level of legal knowledge held by Tasmanian school principals.**

Having considered the areas of law dealt with by school principals, the focus now shifts to issues around the legal knowledge held by Tasmanian school principals. They include:

- the preparation and development they receive concerning education law;
- their level of confidence concerning that knowledge; and
- the accuracy, and adequacy, of their legal knowledge.

Those aspects are represented in Figure 5.



### **Principals' preparation and development<sup>2</sup> in education law.**

#### ***Literature.***

##### *Tasmanian principal preparation and development.*

This section provides an overview of Tasmanian principals' education law training, in particular professional standards, principalship preparation and development, and professional certification. According to Cranston, Ehrich, and Billott (2003), professional standards for school leaders, "try to define the core roles and responsibilities of school leaders, and the skills, capabilities and dispositions they require" (p. 17). For some years Australian educational leadership operated within a complex patchwork of professional standards sponsored by the State education systems and various professional, religious, and business organisations (M. Anderson et al., 2008; Cranston, 2013; Gurr & Drysdale, 2015). That situation was largely resolved in 2012 by the adoption of a national standards framework, the *Australian professional standard for principals* (the *Professional Standard*), developed by the Australian Institute for Teaching and School Leadership (AITSL).

<sup>2</sup> For present purposes, *principal preparation* refers to training received by an aspirant to the principalship, whereas *principal development*, or more often *continuous professional development* (CPD,) is training directed toward increasing the skills and understandings of appointed school leaders.

The *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012b) sets out what principals are expected to know, understand, and do to achieve in their work (B. Caldwell, 2013; Gurr & Drysdale, 2012; Rennie, 2015) and is based on three leadership requirements: vision and value; knowledge and understanding; and personal qualities, social and interpersonal skills. Those requirements are enacted through five professional practices: leading teaching and learning; developing self and others; leading improvement, innovation and change; leading the management of the school; and engaging and working with the community. The need for principals to understand education law arises under each of the five professional practices, but perhaps most clearly under the heading of *leading the management of the school*, which states that principals, “ensure that employment practices and decisions are consistent with legislative requirements” (Australian Institute for Teaching and School Leadership, 2015, p. 18). The leadership requirement —*knowledge and understanding*—specifies that principals:

Have knowledge of relevant national policies, practices and initiatives as well as relevant federal and state legislation, agreements and policies. They understand the implications of child safety, health and well-being, human resource management, financial management and accountability, and other legislative and policy requirements in relation to serving their community and broader society (Australian Institute for Teaching and School Leadership, 2015, p. 20)

In Tasmania, as in the other Australian jurisdictions, there are no qualifications for the principalship specified in legislation. Rather, school principals need only to be registered as teachers. They are not required to complete a higher degree in educational administration. The following section provides an overview of the formal professional training in education law available to Tasmanian school principals. Such legal education encompasses a principal’s initial teacher training, further university-based qualifications, leadership preparation and development sponsored by the DoE, the Tasmanian Catholic Education Office (TCEO), and the Independent school sector, and specific targeted training in relation to education law.

#### *University training.*

For many future Tasmanian school principals, their initial introduction to education law occurs during their initial teacher training. Tasmania currently has one university: the University of Tasmania (UTAS), although Tasmanian students regularly study at institutions in other parts of the country. A four-year UTAS undergraduate Bachelor of Education includes three one-hour

lectures relating to education law issues, addressing: children's rights; duty of care and mandatory child welfare reporting; and disability discrimination (University of Tasmania, 2016d, 2016e, 2016f).

Tasmanian school principals may also further their professional knowledge (Cranston, 2013; Russell & Cranston, 2012) through UTAS postgraduate courses in education. In the Graduate Certificate in Education Leadership, although legal issues may be discussed in the course of some units, the course program does not address education law subjects as such (D. Pullen, personal communication, August 19, 2016). The Masters of Education by coursework is structured similarly and includes units in which legal issues may be discussed, although the course syllabus does not specifically include legal content (University of Tasmania, 2016g, 2016h). The Masters of Education (Teaching) reflects the structure and content of the undergraduate teaching degree, including three one-hour lectures on children's rights, duty of care, mandatory reporting, and disability discrimination (University of Tasmania, 2016a, 2016b, 2016c). The UTAS Faculty of Law does not currently offer education law as a subject for study (University of Tasmania, 2016i). Although opportunities for school principals to study education law at UTAS are limited, it is acknowledged that legal issues will inevitably be raised by students and staff in the course of other discussions and research, informing principals' future practice.

*Tasmanian DoE leadership development courses.*

The Tasmanian DoE program — *Shadowing Program for Aspiring Principals* — is one of only 10 such preparation programs available nationally (Watterston, 2015). The program aims to provide participants, “with an understanding of the practices that underpin the work of effective principals. It supports aspiring principals to gain theory and insights into the role of the principal through school-based shadowing placements with experienced principals” (Professional Learning Institute, 2015b, p. 17). According to Ewington (2014), the program assists aspirants to explore the necessary functional skills required to be a school leader. Although Watterston (2015; see also Kimber, 2013) has observed that the Shadowing Program has had a positive impact in improving levels of aspirant readiness for principalship, the education law benefits of the program may be limited, as the occurrence of legal matters during the shadowing period cannot be predicted, and there is no guarantee that shared knowledge will be legally accurate.

In addition, the Tasmanian DoE, through its Professional Learning Institute (Department of Education (Tasmania), 2012j) conducts a number of professional development courses for

school leaders including *Thrive*, a principal induction program (Professional Learning Institute, 2015a, 2015b). These courses may also address legal issues.

*TCEO leadership preparation and development courses.*

Professional development of Catholic school leaders in Tasmania takes place within a framework reflecting the *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012b), as well as systemic policy requirements. The *Catholic school improvement plan* (Tasmanian Catholic Education Commission, 2011) provides support for legal and policy compliance in Tasmanian Catholic schools. Additionally, school leaders' practice is informed by the *Catholic leadership framework* (Tasmanian Catholic Education Office, n.d.). In conjunction with the Australian Catholic University, the TCEO conducts a number of leadership courses, including preparation for emerging and aspiring leaders, principal induction, and mentoring (Tasmanian Catholic Education Office, 2014-15). These courses may address education law issues.

*Tasmanian Independent schools' leadership preparation and development courses.*

The Tasmanian Independent school sector supports a variety of preparation and development programs for school leaders, as set out in Table 3.

Table 3

*Independent Sector Principal Preparation and Development Programs*

PROGRAM	ORGANISATION	STANDARD ALIGNED?	REFERENCES
Flagship Program	Association of Independent Schools	Y	Association of Independent Schools of New South Wales Ltd., 2016; McCulla & Degenhardt, 2016; Watterston, 2015.
Leading Successfully from the Start	Australian Council for Educational Leaders (ACEL)	Y	Australian Council for Educational Leaders, 2016a; Dinham et al., 2011; Gurr & Drysdale, 2015.
Executive Leadership Program	ACEL	Y	Australian Council for Educational Leaders, 2016b; Dinham et al., 2011; Gurr & Drysdale, 2015.
The Learn: Lead: Succeed resource	Principals Australia Institute	Not known	Principals Australia Institute, 2016; Watterston, 2015.
Changemaker Program	Education Changemakers	Y	Education Changemakers, 2016; Watterston, 2015.
Leading Australia's	The Hay Group	Not known	Dinham et al., 2011; Lacey et al., 2009.

PROGRAM	ORGANISATION	STANDARD ALIGNED?	REFERENCES
Schools			

Such programs may assist school leaders in improving their knowledge of education law.

*Specialised education law training.*

Tasmanian school principals can access specialised education law training in various ways. One option is to study with a university elsewhere in Australia. Tertiary courses include the Graduate Certificate in Education Law from the Australian Catholic University (Australian Catholic University, 2016), and the University of Western Australia's Masters of Education by coursework which may include a unit on education law (University of Western Australia, 2016). In addition the University of Technology Sydney offers a unit on the Law of Education as part of an undergraduate law degree (University of Technology Sydney, 2016).

Legal training is of course not limited to the offerings from tertiary institutions. Corporate providers such as Legalwise Seminars and LawSense offer regular training workshops and seminars on education law throughout Australia (Law Sense, 2016; Legalwise Seminars, 2016). The Victoria/Tasmania Branch of the Australia and New Zealand Education Law Association (ANZELA) conducts occasional workshops on education law in Tasmania, whilst the national ANZELA body hosts a two-day conference annually (ANZELA, 2017). Principals may also attend in-service training on particular education law issues conducted or organised by school systems, professional associations, or statutory authorities. For example, training on anti-discrimination and inclusive education is regularly conducted by the Tasmanian Anti-Discrimination Commissioner, and Safe Work Australia offers training on health and safety legislation.

*Principal Certification.*

The *Professional Standard* provides a statement of what Australian school principals are expected to know, understand, and do to be effective in their roles (Australian Institute for Teaching and School Leadership, 2012b). Importantly, while knowledge and understanding are necessary, those cognitive elements are not sufficient. As B. Caldwell (2013) has pointed out, principals "must be able to 'do' and 'achieve'." (p. 5). This aspect of performance, and evidence thereof, links to the certification process.



In 2012, the Principals Australia Institute (PAI), a national professional body for Australian school leaders, commenced development of the *Australian principal certification program*, based on the requirements and practices of the *Professional Standard* (Principals Australia Institute, 2015). Principal certification has been defined as:

The formal procedure by which the achievement of principals is assessed, verified and recognised in writing by issuing a certificate as to the attributes, characteristics, qualities, qualification or status of individuals in accordance with profession-developed requirements and the Australian Principal Standard. (Kilvert, 2013, p. 4)

Certification is a voluntary professional accreditation. It is not designed to be an eligibility requirement for appointment as a principal, a performance management tool for employers, or a qualification on completion of specific training (B. Caldwell, 2013; Kilvert, 2013; Principals Australia Institute, 2015). B. Caldwell (2013) has argued that the professional learning undertaken by principals to meet the demands of professional certification, aligned with the *Professional Standard*, will play an important role in the development of principals' leadership knowledge, skills, and capacities. As such, engagement with the certification process by Tasmanian principals may positively impact their knowledge of education law, although research findings are as yet unavailable.

#### ***Australian research.***

The first wide-ranging empirical research conducted in Australia to highlight the legal preparation and development of school principals was conducted by Stewart (1996b). From his sample of Queensland government school principals, around 16% indicated that they had undertaken introductory (undergraduate) or advanced (postgraduate) tertiary studies in education law (Stewart, 1996a, 1996b). However, 39% had attended one or more, short (half a day or less) education law in-service training courses. Stewart and McCann later observed in respect of this form of professional development that, "These courses do not appear to have enhanced the level of knowledge of the principals undertaking them to any noticeable extent." (Stewart & McCann, 1999, p. 137). In addition, Stewart (1996b) found no statistically significant difference between the knowledge levels of participants who had undertaken either form of training (university or in-service) and those who had not. Indeed, on a simple comparison basis, participants without university legal training scored higher than those with it on most knowledge questions, and those who had not attended in-service legal training scored higher than those who did on half of the

knowledge questions. Stewart (1996b) recommended that principal preparation and induction training address legal issues, and proposed that more frequent, more focused and more geographically accessible education law in-service training be conducted for Queensland government school principals.

McCann's (2006) study of 102 Catholic school principals in Queensland reached findings that differed from Stewart's (1996b) conclusions. Forty percent of participants in McCann's research had studied some education law at tertiary level. Some 52% reported attending legal in-service training, with such courses being general in nature and usually lasting longer than one day. McCann recommended that education law be included as a formal unit of study in both teacher preparation and leadership preparation and development courses.

The small-scale exploratory study conducted by the researcher (Trimble, 2011) also examined the university-based education law preparation and development of school leaders, although the limited sample size of the study did not support the generalisability of the data. One third of participants had undertaken law-related university study. A higher proportion (47%) reported attending legal in-service or professional development courses. Overall, the researcher proposed that the education law training of school principals should be further investigated.

### ***International research.***

The United States literature on education law is replete with doctoral research studies concerning the impact of legal matters on school principals in different State jurisdictions (e.g., Bagnato, 1990; Brabrand, 2003; Burch, 2014; Copenhaver, 2005; Lewis, 2013). Although each American State system is unique in many respects, the influence of national Professional Standards, program certification, and licensure arrangements mean that there are many elements in common among the State jurisdictions concerning the legal preparation and development of school leaders. The national study conducted by Eberwein (2008) is discussed as an example of the American research base.

In his survey-based study, Eberwein found 87% of participants reported undertaking postgraduate university training as part of their pre-principalship licensure process, and 19% indicated they had completed a university-level law course after assuming the principalship. In addition, 58% reported having attended a comprehensive education law workshop or in-service, during the previous decade. Only 5% of participants indicated that they had received no

education law training. On average, participants rated their education law training as more effective than ineffective.

Eberwein analysed the training profile of participants against their legal knowledge score data to ascertain the impact of legal training. He found the highest mean knowledge scores were achieved by participants who had completed a university-level law course as part of their principalship licensure process, followed by those who had attended comprehensive in-service law training. Principals who had taken a university law course after assuming a principalship role scored lower still. Those who reported no law training had the lowest mean knowledge score. The data also revealed a slight positive correlation between participants' legal knowledge and their rating of training effectiveness.

The Canadian education law study conducted by Findlay in 2007 was based on survey data from 193 practising school principals in the Province of Saskatchewan. As expected in research of this nature, the survey included items relating to the participants' legal preparation and development, as well as a legal knowledge test. Findlay found 47% of participants had undertaken a university-based legal course (mostly at undergraduate level), while 65% had attended in-service legal professional development. Findlay concluded:

Those respondents who had taken a university class did better on the number of correct responses than those who had not; some measure of education appears to provide practising administrators with additional knowledge concerning legal issues in the school setting. (p. 194)

***Summary — Principals' preparation and development in education law.***

A summary of the literature regarding school principals' preparation and development in education law is at Figure 6.

Knowledge of education law is a requisite for principals under the *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012b). However, no study or training in education law is mandated for Tasmanian principals. There are very limited opportunities currently available at UTAS for aspirant and practising principals to study education law, although such programs are available through tertiary institutions in other States. Education systems and other providers offer a range of leadership preparation and development courses aligned with the *Professional Standard* which may address some legal issues. Principal certification is voluntary, but may help to foster a professional environment encouraging improvements in education law knowledge. Previous Australian research has suggested that more legal training is required for principals, although the link between principals' training and legal knowledge is contested.

Figure 6. Summary of principals' preparation and development in education law.

### **The level of confidence school principals have in relation to their legal knowledge.**

The structure of the literature review on school principals' legal knowledge is set out in Figure 7.

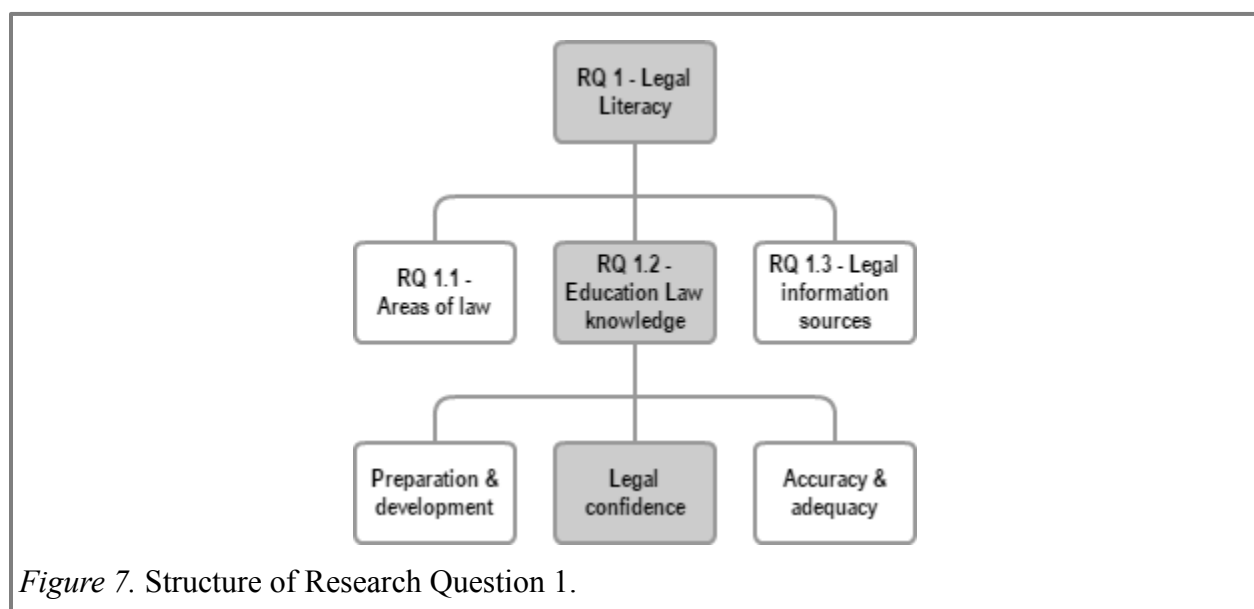


Figure 7. Structure of Research Question 1.

### ***Literature.***

The *bounded rationality* model of decision making (H. Simon, 1956, 1959, 1982, 1989) suggested that individuals make decisions under constraints of limited time, knowledge, and

information processing capacities. As such, decision makers — such as principals of schools — even in the most favourable of situations are likely to be prone to error (Etzioni, 2014; Sacchi & Burigo, 2008). This limitation on rationality may be heightened by a decision maker's over-estimation of their own levels of knowledge, popularly termed the *Dunning-Kruger effect* (Kruger & Dunning, 1999). This section discusses issues related to over-confidence and knowledge miscalibration.

There is a real and significant tendency for people to view themselves, the world, and the future more positively than is objectively warranted (Dunning, Heath, & Suls, 2004; Fast, Sivanathan, Mayer, & Galinsky, 2012; Moore & Cain, 2007), and to think they know more than they actually know (Alba & Hutchinson, 2000; Asaad, 2015; Blavatskyy, 2009). Sound decision making typically requires accuracy in the information relied on by the decision maker, so over-confidence may have important consequences in an organisational setting. The literature relating to over-confidence in the accuracy of one's own knowledge or judgement (Fast et al., 2012; Moore & Healy, 2008) links this decision making condition with negative behaviours (set out in Table 4), and to inferior job performance.

Table 4

*Decision Making Behaviours Associated with Over-Confidence.*

Behaviours	References
Reduced accuracy	Alba & Hutchinson, 2000; Kausel, Culbertson, Leiva, Slaughter, & Jackson, 2015; Soll & Klayman, 2004
Awareness of, & acceptance of, risk	Asaad, 2015; Kausel et al., 2015; Picone et al., 2014
Egocentric discounting of advice	Picone et al., 2014; See et al., 2011; Yaniv, 2004
Reduced advice-taking	See, Rothman & Soll, 2010; Tost, Gino & Larrick, 2012; Yaniv, 2004
Exaggerated decisiveness & inflexibility	Picone et al., 2014; Pillai, 2010; Shipman & Mumford, 2011
Impulsivity, quick decisions	Hambrick, Cho & Chen, 1996; Picone et al., 2014
Reliance on intuition & experience	Strahilevits, Harvey & Ariely, 2015

In relation to decision making tasks requiring careful deliberation and accuracy, the over-confidence of decision makers in their own knowledge may prove organisationally dysfunctional (Fast et al., 2012; See, Morrison, Rothman, & Soll, 2011). As Tost, Gino and Larrick (2012)

have pointed out, over-confident decision makers are likely to feel that they do not need to rely on the advice of others. In light of this research, over-confidence may be important for school principals' decisions regarding legal advice.

***Australasian research.***

The issue of participants' over-confidence in the accuracy of their own legal knowledge was not addressed by the previous research conducted by Stewart (1996b), McCann (2006), or the researcher (Trimble, 2011). Some limited insight regarding education law over-confidence is, however, available from the Masters-level research undertaken in New Zealand by Wardle (2006). Using a case-study methodology, Wardle investigated the education law experiences of New Zealand school principals. In a series of questions based on the participants' familiarity with education law, and their confidence in their own legal knowledge, one participant (Principal One — the youngest and least experienced participant) indicated a positive level of agreement regarding legal knowledge and confidence. Although the researcher did not link the participants' level of knowledge accuracy with their confidence levels, he did find that the most confident participant (Principal One) correctly responded to only three of the seven knowledge test questions, perhaps raising the issue of over-confidence on the participant's part.

***International research.***

The American research revealed a very limited consideration of the over-confidence issue. One instance in which it was addressed, to a degree, was the doctoral study reported by Andrews (2012) concerning social media and school educators' knowledge of the law of free speech. Some 66% of participants considered their legal knowledge to be adequate, whereas only a third demonstrated an adequate level of legal understanding. The question of miscalibration between perceived confidence and assessed knowledge was not however pursued. Potential legal over-confidence was also flagged by Burch (2014), when investigating school principals' understanding of constitutional law, although she ultimately found no descriptive difference between the principals' perceived level of knowledge and their objectively-assessed knowledge.

Education law scholarship in Canada, however, presented a somewhat different picture. Leschied et al. (2000) examined the legal knowledge of Ontario public school educators, finding that participants had "a considerable lack of confidence in their ability to respond in an informed way to situations requiring knowledge of the law" (p. 40). The researchers went on to note that this level of under-confidence appeared justified in light of the participants' low level of legal

knowledge. In contrast, the research undertaken by Findlay (2007a, 2007b) with school principals from Saskatchewan determined that most participants (88% of sample) reported some measure of confidence when dealing with legal issues, although the poor mean results of 47.5% correct responses on the knowledge test suggested that such confidence might not have been well-founded.

The empirical research on the miscalibration between school principals perceived and actual education law knowledge remains inconclusive and warrants further attention.

***Summary — The level of confidence school principals have in relation to their legal knowledge.***

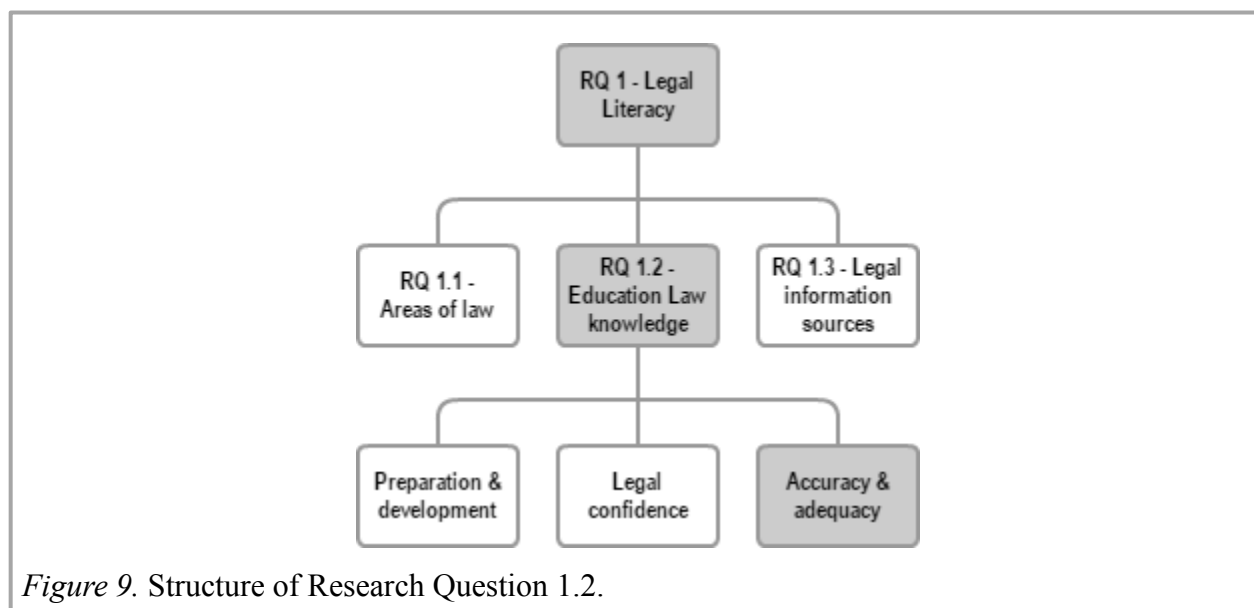
A summary of the literature review regarding the level of confidence principals have in their legal knowledge is at Figure 8.

Decision making literature and research identifies negative organisational consequences that may flow from over-confident decision makers who believe that they know more than they actually know. One particular area of dysfunction is reduced advice-taking. This line of research may have application to school principals who miscalibrate their subjective and objective legal knowledge. The issue of over-confidence has not been substantively addressed in Australian education law studies; it however appears to be an emergent theme in research from the United States, and has been recognised, to a limited degree, in Canadian research.

*Figure 8.* Summary of the level of confidence school principals have in relation to their legal knowledge.

### **The accuracy and adequacy of school principals' legal knowledge.**

The structure of the literature review regarding school principals' legal knowledge is set out in Figure 9. This section examines different approaches to the assessment of principals' legal knowledge and their limitations in the context of education law research.



### ***Literature.***

Authorities both in Australia and overseas have proposed qualitative and normative standards for the assessment of school principals' legal knowledge. As far back as 1988, the respected Australian education lawyer, Dr. Helen Sungaila, suggested that an educator, "should have an understanding of the basic principles of that law which infringes on professional educational practice sufficient to recognise whether a problem which has arisen is one about which professional legal advice should be sought, or not" (p. xi). Similarly, Stewart and McCann (1999), considered that principals, "need to be sufficiently legally literate to be able to recognise when a legal problem is developing in their school and how to go about correcting that problem." (p. 147) From a North American perspective, in calling for more law-informed educators, Redfield (2003) argued for school leaders, "who can act preventively to avoid or minimise legal entanglements and proactively to influence both litigation strategy and government policy" (p. 611), whilst Russo (2015) has argued that it is essential for education leaders to have, at a minimum, a basic understanding of school law. Common to these conceptions regarding the education law knowledge required by school principals are two important themes. Firstly, that a



level of knowledge is required across the breadth of the education law field; and secondly, that such knowledge must be sufficient to support the principal taking action: to resolve the matter, or to seek advice.

The standard method to ascertain the accuracy of school principals' legal understanding has become a *legal knowledge test*, undertaken as part of a quantitative survey. These assessments exhibit considerable variation concerning: the width of legal knowledge examined (from broadly-based to a specific area of law); the types of law involved (legislation, common law, case decisions); the forms of question used (scenarios, short statements, multiple-choice, true/false); and critically, the score judged acceptable by the researcher. A range of American and Canadian studies that examined the legal knowledge of school principals is set out in Table 5. Convention within the field appears to have set the pass level at around 70% correct.

Table 5

*American and Canadian Studies on School Principals' Legal Knowledge*

Year	Researcher	Participants	Test	Results
1978	Zirkel (N)	Professional educators	20 items	Mean score of 54% - a "fail grade". More uninformed than informed responses. Law knowledge poor.
1983	Shaw (S)	Principals	20 items	Mean score of 48.5%; fairly good knowledge of school law.
1985	Johnson (S)	Principals	41 items	Correct responses ranged from 25% (markedly inaccurate) to 64% (markedly accurate).
1986	Abegglen (S)	Public school employees, including principals	35 items	Mean score of 51%; result categorised as low knowledge.
1986	Caldwell (S)	Principals	40 items	Mean score 78%; average level of knowledge.
1986	Ogletree & Lewis (s)	Principals & teachers	100 items	Proficiency level defined as 70%; achieved on only 20 out of 100 items.
1986	Souve (S)	Educators, including principals	100 items	Mean of 57.5%; participants very unfamiliar with school law.
1987	Kerrigan (S)	Principals	15 items	Principals not fully informed about school law; legal knowledge classified as limited.
1988	Smith (S)	Principals	-	Mean score of 74.1%; room for improvement in legal knowledge.
1990	Clark (S)	Superintendents & educators, including	10 items	Principals not fully informed about school law; legal knowledge classified as only marginally

Year	Researcher	Participants	Test	Results
		principals		correct.
1990	Osborn (S)	Principals	40 items	Mean score of 72%; fair knowledge of school law.
1993	Hines (S)	Principals & designates	-	Participants mastered only 40% of the material.
1996	Gordon (S)	Principals	40 items	Mean score of 73%; average preparation.
1996	Robertson (S)	Principals	20 items	Proficiency level defined as 70%. Mean score 60%; inadequate knowledge base.
1996	Singleton (S)	Superintendents & educators, including principals	10 items	Principals' knowledge was superior to superintendents & teachers, but all staff required refresher training.
1996	Zirkel (N)	Educators, including principals	13 items	Highest correct score was 15%; very low, almost attributable to chance.
1998	*Peters & Montgomerie (P)	Educators, including principals	14 items	Few participants had a firm grasp of the law as it pertains to rights in education.
1999	Kalafatis (S)	Principals	40 items	Proficiency level defined as 772.5%; 65% failed to meet minimum competency level.
1999	Nardone (S)	Principals and assistant principals	-	Insufficient knowledge base in special education law.
2000	Bounds (S)	Educators, including principals	-	No group thoroughly understood all the components of school law.
2000	*Leschied, Lewis & Didkinson (P)	Educators, including principals	-	Participants self-assessed as "somewhat knowledgeable".
2001	Hines (S)	Administrators, including principals	21 items	Insufficient levels of knowledge.
2003	Brabrand (S)	Principals	40 items	Mean score 73.3%; average preparation or fair legal knowledge.
2005	Copenhaver (S)	Principals	-	Mean score 68%; low level of special education law knowledge.
2006	Schlosser (S)	Principal interns	15 items	Mean score exceeded fundamental value of 70%.
2007	*Findlay (P)	Principals	20 items	Mean score of 47.5%; participants lacked the knowledge to correctly answer the knowledge test items.

Year	Researcher	Participants	Test	Results
2007	Overturf (S)	Principals	-	Mean score was 49.8%.
2007	Power (S)	Principals	24 items	Mean score of 65.6% correct; principals require more information.
2008	Eberwein (N)	Principals	34 items	Proficiency target 70%; mean score 58.7% correct – legal knowledge is inadequate.
2010	Provinsano (S)	Principals	30 items	Mean score 63.7% correct.
2010	Lack Smith (S)	Principals	76 items	Mean score 70.8% correct.
2011	*Cooper (P)	Educators, including principals	-	Mean scores 40% student rights, 60% teacher rights; overall legal literacy levels low.
2012	Andrews (S)	Educators, including principals	13 items	Proficiency level defined as 69%. 35% of participants demonstrated adequate legal knowledge.
2012	White (S)	Principals	34 items	15.9% of participants scored 70% or higher.
2013	Lewis (S)	Principals	-	Proficiency level defined as 75-80%; 69% of participants considered proficient. Additional training required.
2015	Singh (S)	Principals and assistant principals	42 items	More than 51% of participants were unable to attain the 70% criterion of basic knowledge.

\* Canadian research (N) National study; (P) Provincial study; (S) State study

Almost all of the studies in Table 5 were conducted in the course of doctoral research. As such, the instrumentation used in their data collection was subject to evaluation in terms of validity and reliability. Nevertheless, a number of aspects of the general legal knowledge test approach may warrant consideration, particularly:

- the relevance of the subjects examined to the experience of the participants, individually and as a group;
- the *snapshot-in-time* nature of a one-off test;
- the uncontrolled nature of the test conditions;
- the basis on which the score of 70% has been settled as an indicator of acceptable knowledge; and
- the capacity of a true/false or multiple-choice answer to accurately portray a nuanced understanding of complex legal issues.

Such questions may go to the weight afforded to evidence of principals' education law knowledge.

*Australian research.*

The Australian research regarding school principals' knowledge of education law sits comfortably within the inquiry tradition established by the North American literature. The Stewart (1996b) study used a survey-based legal knowledge test developed by the researcher containing ten items based on common law decisions from Australian court cases together with 12 items concerning Queensland and Commonwealth legislation affecting education. In relation to the common law items, the range of correct responses varied from 87% to 12%. The data in relation to legislation reflected a somewhat higher level of knowledge. Stewart (1996b) concluded that "some principals do not have even the most rudimentary knowledge of school law." (p. 157)

That instrumentation was subsequently adopted with modifications to reflect changes in the law by McCann (2006), who similarly used a two-part survey-based knowledge test with 10 items dealing with common law issues and an additional 10 questions relating to Queensland and Commonwealth legislation. On the common law questions, the range of correct responses varied from 91% to 9%. On the legislation items, the proportion of correct responses ranged from 89% to 4%. McCann observed that the results indicated a lack of knowledge on the part of participants with regard to common law issues of negligence and a higher accurate understanding of issues associated with legislation, echoing the pattern of findings in the Stewart study.

In the small-scale study conducted by the researcher in 2011 (Trimble, 2011), survey participants were asked to respond to four "fact" scenarios concerning adult non-sexual physical contact with students based on legislation, case law, and legal principle. The mean average of legally correct responses was 37.5%. Almost half of participants answered only one or no questions correctly and only one of the 15 participants was able to answer all four of the questions accurately. More correct responses were recorded on the legislation questions than on the case law question. The findings were not statistically generalisable but supported the researcher's conclusion that "The working knowledge held by participating principals in relation to the law of nonsexual physical contact between teachers and students was generally not of a high standard." (p. 41)

***International research.***

It is interesting to note how far afield the legal knowledge test approach has travelled. Similar research has been reported from jurisdictions in Africa as well as from Malaysia. Three reported African research projects surveyed educators, including school principals, in South Africa (Smit, 2009), Botswana (Moswela, 2008), and Nigeria (Eni & Arit, 2016). The studies all found participants lacked an adequate level of legal knowledge. Although the Malaysian research undertaken by Tie (2014) disclosed an impressive mean score of 80% correct responses by participants, the researcher nonetheless advocated additional training in education law for school principals.

***Summary — The accuracy and adequacy of school principals' legal knowledge.***

A summary of the literature review regarding the accuracy and adequacy of school principals' legal knowledge is at Figure 10.

The question of the accuracy and adequacy of school principals' legal knowledge has been examined in education law studies in Australia and North America. By applying a quantitative "legal knowledge test" to participants, and using a proficiency score of 70% correct, the greatest majority of researchers have found principals' legal knowledge to be insufficient. This approach is, however, subject to a number of weaknesses. The literature also proposes an alternative approach which rests on the adequacy of principals' legal knowledge rather than accuracy alone. The view suggests that a principal should have sufficient basic knowledge to be able to deal with routine legal problems, and understand when expert legal support, such as advice from a lawyer, is required.

*Figure 10.* Summary regarding literature on the accuracy and adequacy of principals' legal knowledge.

**Research Question 1.3 — Sources of education law support**

The structure of the literature review regarding school principals' sources of legal support is set out in Figure 11.

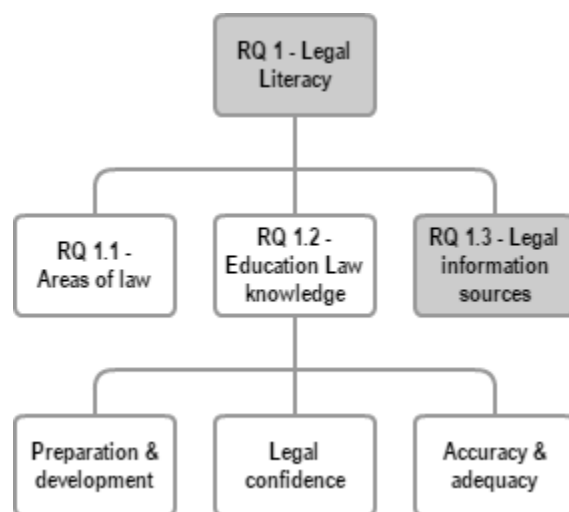


Figure 11. Structure of Research Question 1.3.

Having considered the accuracy of school principals' legal knowledge, this section addresses the basis for school leaders seeking *legal decision support* (legal information and advice provided by another person or source), organisational advantages of decision support, and barriers to obtaining it. This is followed by a review of the empirical evidence regarding school principals' legal decision support.<sup>3</sup>

### ***Literature.***

#### *School principal' decision making and decision support.*

A major issue within education law literature concerning school principals' legal knowledge is the quality of principals' legal knowledge and their acceptance of the benefits of obtaining more expert legal advice. This recognises two modes of decision making on education law problems: the school principal acting without advice; and with expert advice. Between these anchor points on an education law decision continuum, the school principal may obtain decision support from diverse sources with differing levels of legal reliability, located within the school's legal environment.

<sup>3</sup> It is recognised that the terms *information* and *advice* are subject to a degree of contestation in the literature. In this study information is considered to mean facts or details about a subject presented in a non-normative framework, and advice means guidance or recommendation in relation to a decision or course of conduct. Both are forms of decision support.

Lunenburg (2010a) has noted:

Research on administrative behaviour in schools is consistent with identifying the demands on the principal as fragmented, rapid-fire and difficult to prioritise... These data support the observation that much decision making is intuitive. The fast and hectic practice of the principal's job makes the use of intuition almost a necessity. (p. 10)

Such decision making is typically fast and automatic, in contrast with slower, conscious and logical thinking. Decision makers in the former mode primarily utilise their personal store of experiential knowledge to inform their decision choices or simply continue with existing strategies (E. Collins et al., 2011; Finkelstein & Hambrick, 1990; Heyden et al., 2013). This can be both quick and effective for non-experts when applied in a relatively stable organisational environment where the problems for decision are routine and structured. However, reliance on experience-based intuition may result in lower-quality decisions if the maker's knowledge is inaccurate, or out-dated (E. Collins et al., 2011; Heyden et al., 2013; Sacchi & Burigo, 2008) or is inadequate to address complex environmental stimuli (Dane & Pratt, 2007; Salas, Rosen, & DiazGranados, 2010).

One of the most common themes in the organisational decision making literature is that few executives and managers make important decisions in isolation. Such decisions are more usually made after consulting others, inside and outside the organisation (Bonaccio & Dalal, 2006; Kausel et al., 2015; Meissner & Wulf, 2014; Tzioti, Wierenga, & van Osselaer, 2014). The process of an organisational leader soliciting decision support from one or more sources while retaining responsibility for the ultimate decision, as may occur with school principals making decisions regarding their schools, is described by the Judge-Adviser System (JAS) model<sup>4</sup> developed by Snizek and colleagues (Snizek, 1999; Snizek & Buckley, 1995; Snizek & Van Swol, 2001) and others (Arendt et al., 2005; McDonald & Westphal, 2003). The JAS model suggests that decision makers (judges) are motivated to seek support in relation to decisions that are important, unstructured and involve uncertainty (Beemer & Gregg, 2008).

*Advantages of taking advice.*

A critical assumption of the JAS model is that, by seeking decision support from advisers some benefit accrues to the decision maker or the organisation. The primary advantage involves better-

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<sup>4</sup> Also termed the CEO-Adviser model (Arendt, Priem, & Ndofor, 2005)

quality decisions, and enhanced accuracy (Dalal & Bonaccio, 2010; Kausel et al., 2015; Meissner & Wulf, 2014) but others include:

- reducing uncertainty and environmental turbulence (Dyer & Ross, 2008; Tost et al., 2012);
- greater organisational innovation and improved performance (Kausel et al., 2015; Meissner & Wulf, 2014);
- introducing different perspectives and interpretations (Heyden et al., 2013; Mole, 2016);
- overcoming information and knowledge gaps (Bonaccio & Dalal, 2006; Mole, 2016); and
- structuring the decision problem and identification of the best way to solve it (Beemer & Gregg, 2008; Dalal & Bonaccio, 2010).

*Barriers to advice-seeking.*

Several explanations have been posited as to why decision makers may not consult advisers about important decisions. In relation to the decision maker's internal state, it is widely acknowledged that people tend to overweight their own knowledge, and discount that of others, even when the adviser is an acknowledged expert in the field. It is suggested that the higher the level of self-confidence in the decision maker, the lower is the level of advice-taking (See et al., 2011; Tost et al., 2012; Yaniv, 2004). Further internal states that may limit consultation include a previous negative experience involving the same, or another, adviser (Mole, 2016), and a decision maker's reluctance to admit that an adviser may hold knowledge about the organisation's operation which is superior to their own (Dyer & Ross, 2008; Schrah, Dalal, & Sniezek, 2006). See and colleagues (2011) also highlight the belief that taking advice, or indeed any input from others, is an indicator of poor leadership (Ashford, Blatt, & Van de Walle, 2003; E. Morrison & Rothman, 2008).

The advisory relationship itself can be the basis for reluctance to seek decision-support. Dalal and Bonaccio (2010) have pointed out the importance of decision maker autonomy in this regard. Help of any kind may be perceived as a threat to freedom, and individuals may prefer to be the origin of their actions rather than be subject to the influence of an adviser (Dyer & Ross, 2008). Issues of trust have also been recognised as possible barriers (Mole, 2016; Mole, Baldock, & North, 2013). Problems with the advice may also dissuade a decision maker from consulting



an adviser, including: the cost and perceived value for money (Meissner & Wulf, 2014; Mole, 2016); its reliability and quality (Blackburn, Tanewski, & Carey, 2010; Mole et al., 2013); and timeliness of the adviser's response (Blackburn et al., 2010; Dyer & Ross, 2008). Interestingly, Mole (2016) has pointed out that recourse to informal advice, such as that provided through social networks of peers and colleagues, may reduce the seeking of formal advice and indeed act as a substitute for it.

### ***Australian research***

In the Stewart (1996b) study, participants were asked to rate various sources of legal knowledge in terms of their decision making significance. The most important sources, rated as number one by participants, are displayed in Table 6. The Departmental Manual was clearly the most important legal decision-support for participants, which Stewart suggested was based on its accessibility. Data concerning Departmental lawyers were included in the Head Office result, and reflected problems regarding the relationship between the Legal Services Unit and the principalship, particularly concerning timeliness of advice.

Table 6

*Sources of Principals' Legal Knowledge - Stewart (1996b)*

Source	%	Source	%
Departmental Manual	36.6%	Principals' Associations	6.8%
Regional Office	14.9%	In-service courses	5.0%
Head Office	11.2%	Mass media	0.6%
Professional journals	8.7%	University courses	-
Other principals	8.7%		

Note: Data drawn from *School principals and the law: A study of the legal knowledge needed and held by principals in government schools in Queensland* by D. Stewart, 1996, p. 161, PhD dissertation, Queensland University of Technology, Brisbane, QLD.

Although McCann (2006) replicated the earlier Stewart methodology, his research produced different findings in relation to the sources of principals' legal knowledge. The results are set out in Table 7. When ranked in priority order, precedence was given to: other principals; professional journals; administrative handbook; industrial relations unit; Queensland Government Gazette; area supervisor; in-service courses; principals' association; mass media; and community friend.

Table 7

*Sources of Principals' Legal Knowledge - McCann (2006)*

Source	%	Source	%
Administrative Handbook	92%	Department of Education Manual	48%
Industrial relations Unit	91%	Principals' Association	41%
Area supervisor	89%	Mass media	32%
Other principals	80%	University courses	32%
Professional journals	72%	Professional Associations	15%
In-service courses	59%	Other	7%
Community friend (lawyer)	56%		

Note: Data drawn from *Principals' understandings of aspects of the law impacting on the administration of Catholic schools: Some implications for leadership* by P. McCann, 2006, p. 342, PhD dissertation, Australian Catholic University, Melbourne, VIC.

In the small-scale enquiry conducted by the researcher in 2011 (Trimble, 2011; Trimble et al., 2012), sources of legal decision-support most consulted by participants were found to be: the DoE Legal Services unit, DoE policies and guidelines; regional staff; fellow school leaders and the union lawyer. In terms of perceived usefulness that ranking remained unchanged except that support from colleague principals was advanced over that of regional staff.

### ***Overseas research.***

The American studies in relation to legal decision support relied upon by school principals show a breadth of sources similar to those highlighted in the Australian research. In particular, these studies reinforce the importance of advice from colleagues even, as noted by Kallio and Valadez (2002), when principals recognise that this support may have a low level of accuracy.

The Canadian research reveals two important studies addressing sources of legal decision support consulted by school principals. Leschied, Lewis, and Dickinson (2000) found two different patterns of consultation by school leaders, dependent on the urgency of the legal matter at hand. For non-urgent issues, participants reported that they would consult: colleague principals; hierarchical superiors; professional journals; and lawyers. In relation to urgent legal questions, however, they would first seek the advice of their superiors. The 2007 research by Findlay produced similar findings. For cases requiring immediate attention, participants willingly sought advice from their administrative superiors and from their own colleagues; however, in

relation to less pressing issues many principals indicated that they did not seek external advice. Rather, they reported making their decisions based on experience or intuition.

***Summary — Sources of education law support.***

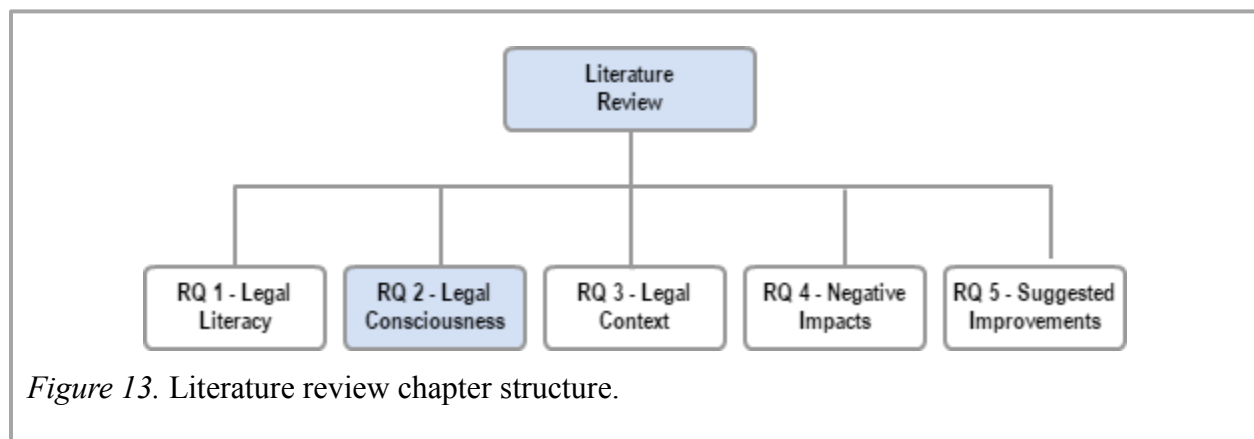
A summary of the literature on school principals' sources of legal support is at Figure 12.

School principals practice within a legal environment that requires them to adopt two different forms of decisions. One form involves fast-paced, generally routine decisions on which they usually refer to their own (or their colleagues') store of experiential knowledge and intuition. For decisions on less routine matters, they tend to consult more expert legal decision support. For a number of reasons, some principals may choose not to seek advice.

*Figure 12.* Summary of sources of education law support.

**Research Question 2 — What is the Legal Consciousness of Tasmanian School Principals?**

The structure of the literature review regarding the legal consciousness of school principals is at Figure 13. The previous section of this literature review examined the existing scholarship



*Figure 13.* Literature review chapter structure.

regarding the legal literacy of school principals. It was based on a formal conception of education law, often referred to as “black letter law” (Samuel, 2009, p. 424). That is, the written law found in legislation and judges’ decisions, and enforced through the courts (Richards, 2015). However, the area of academic interest falling under the broad banner of *Law and Society* suggests this may present an incomplete picture of legal understanding, unless there is also some consideration of *legal consciousness*. That term describes the law located within “everyday life and common transactions” (Silbey, 2005, p. 350), as understood and experienced by ordinary

people in ordinary settings (Halliday & Morgan, 2013). Research Question 2 for this study asks “What is the legal consciousness of Tasmanian school principals?” The literature review now discusses how legal consciousness is defined, and research that may have relevance for the legal consciousness of school principals.

### ***Literature.***

The Law and Society tradition of considering both written law and personal legal understandings brings with it an ontological perspective spanning both the objective and subjective, as reflected in Deweyan Pragmatism (Cresswell, 2008; B. Johnson, Onwuegbuzie, & Turner, 2007; J. Shaw, Connelly, & Zecevic, 2010). The law in books has an objective reality, as Silbey asserts, “Laws are material phenomena” (2005, p. 327). Legal consciousness, however, concerns, “Subjectivity, meaning and cognition” (Engel, 1998, p. 126). Combining facts “out there” (Silbey, 2005, p. 327) with subjective meanings, socially constructed by school principals dealing with legal issues, gives a more complete account of how law impacts schools and their leaders than would either perspective alone.

While definitions of legal consciousness are subject to debate (W. Butler & Grier, 2012; Silbey, 2005), this study has adopted an understanding encompassing both ideas and action as constituting legal consciousness, “The ways in which the law is experienced and understood by ordinary citizens” (Ewick & Silbey, 1991-1992, p. 737). Although the literature suggests that legal consciousness is formed in some part through the person’s previous contact with the law (Hoffmann, 2003; A. Marshall & Barclay, 2003; Silbey, 2008), a number of authorities also propose that it may be shaped by social norms and the person’s contextual environment (Halliday & Morgan, 2013; Hoffmann, 2003; Sarat & Kearns, 1993). Legal consciousness, however, is not a fixed construct. Rather it is ever-changing, “constantly altered by experiences and interactions” (Hoffman, 2003, p. 694). All these factors work together to create substantial variations in the legal consciousness of people who otherwise may seem similarly situated (Ewick & Silbey, 1998; Nielsen, 2000).

### ***Research.***

The researcher was unable to locate any studies addressing the legal consciousness of Australian school principals in relation to the operation of law in their schools. However, D. Young, Kraglund-Gauthier and Foran (2014) make the point in relation to education law that Australian *teachers*, “often believe that simple common sense is all that is required to guide their behaviour

in and out of the classroom.” (p. 7) Research that may be partly comparable includes that undertaken by D. Cooper (1995) concerning the legal consciousness of British education authority officers. Significantly, the researcher found *juridification* – a concept broadly synonymous with *legalisation* as used in this study – as a central concept for the officials interviewed. D. Cooper went on to argue that the information concerning the juridification process would be incomplete without an understanding of the participants’ attitudes toward juridification, because individual understandings alter officials’ reception and application of the law (see also Hertogh, 2009; Richards, 2015). D. Cooper found that the juridification process influenced the varied and contradictory legal images held by the study participants.

***Summary — Principals’ legal consciousness.***

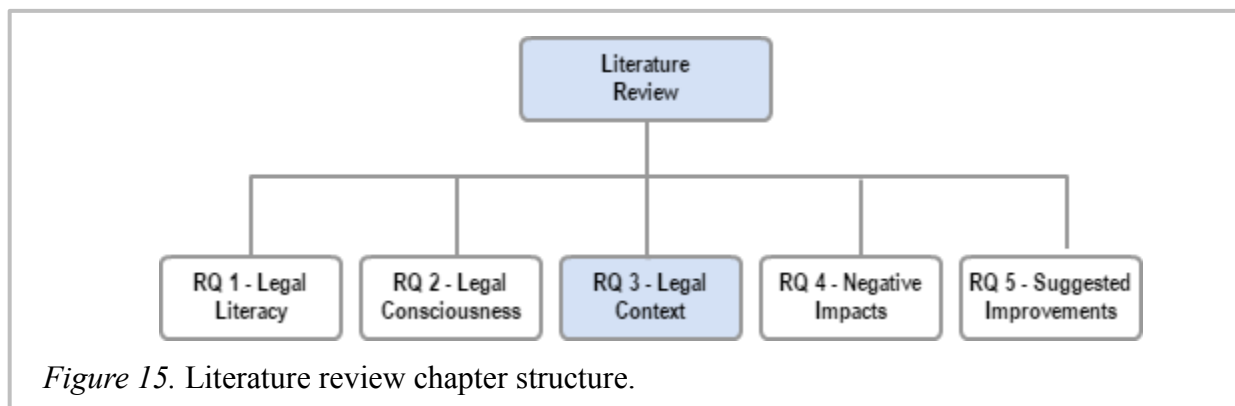
A summary of the literature in relation to school principals’ legal consciousness is set out in Figure 14.

In contrast to law found in legislation and judges’ decisions, legal consciousness concerns peoples’ understanding *about* the law, which may differ from enacted law. It adds another layer to legal understanding, and provides a more complete picture of the reality of principals’ dealings with legal issues. Although it appears there is no research which deals specifically with the legal consciousness of school principals, the D. Cooper study (1995) illustrates the impact of the external legal environment on non-lawyers, and how legal consciousness varies between individuals and over time.

*Figure 14. Summary of principals’ legal consciousness.*

**Research Question 3 — What is the Legal Environment Faced by Tasmanian School Principals?**

The structure of this literature review, showing the position of the constituent topics, including that of school principals’ legal context, is at Figure 15.



The open system model of schools and the law expressly recognises legal environments both within, and external to, the school organisation. That model is examined in detail in Chapter 3. This section of the literature review specifically addresses the legalisation of the environment faced by school principals.

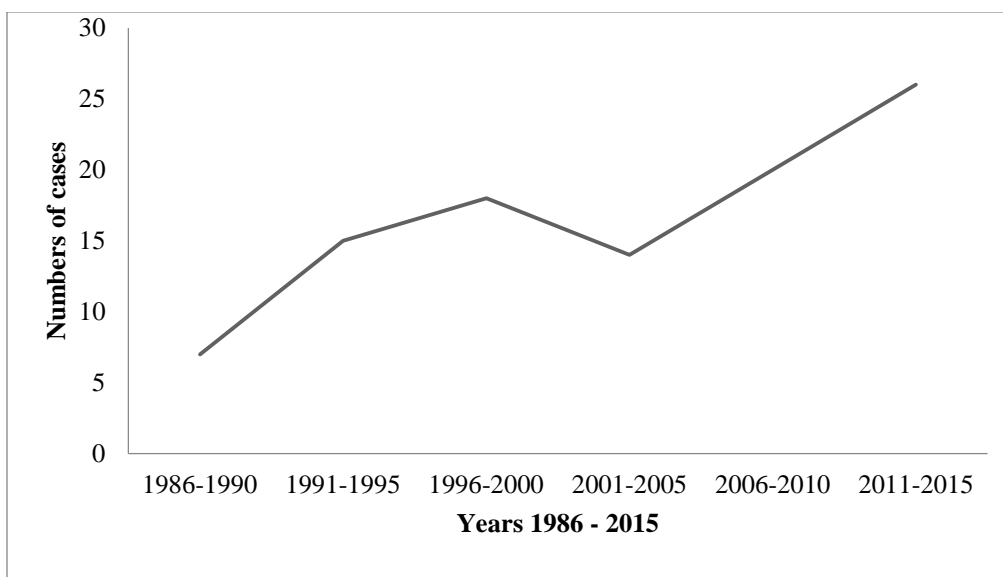
### ***Literature.***

Writers have observed, generally, that Western societies are becoming more legally-complicated (Davies, 2009; Gullatt & Tollett, 1997). Without suggesting that Australia has reached the stage of *hyperlexis* identified in the United States (Manning, 1977) the volume and complexity of law in general, and the pace of legislative change, appear to be increasing in Australia (Hayne, 2000). This *legalisation* impacts society at large, and is similarly reflected in the education sector.

According to P. Williams (1994, 1995), an early researcher on education law in Australia, legalisation involves a change in the external environment of schools characterised by an increase in the number and scope of relevant legislation and court decisions and a willingness in stakeholders to challenge educational decisions and practices using legal mechanisms. The process of contemporary school legalisation represents the sum of several factors. Firstly, the scope of education law is broadening. Traditionally the main legal problem facing Australian principals was the physical safety of students (Stewart, 1998b). Now, like the chief executive of a small town, the school leader deals with an ever-increasing range of issues such as crime, employment law, personal and property safety, family and child welfare law, discrimination, and privacy and information issues (Siegel, 2017; Tronc, 2009) and the broad canvas of legal topics shows no signs of shrinking (Sungaila & Swafford, 1988). Secondly, the volume of law involved with the running of a school continues to grow (Birch & Richter, 1990; P. Williams, 1994, 1995) The Tasmanian education statute provides a simple, but clear, illustration of this

inexorable expansion. The *Education Act 1885* (Tas) established public education in Tasmania, using 44 sections over eight pages. It was replaced by the *Education Act 1932* (Tas): 48 sections, in 26 pages. The more recent *Education Act 1994* (Tas) was drafted in 93 sections and three schedules, occupying 54 pages. The *Education Act 2016* (Tas) contains 264 sections and eight schedules, across 376 pages. In this way the legalisation of schooling requires principals not only to understand more areas of the law but also to be familiar with existing areas in which the law continues to expand.

The third element of the legalisation process lies with the increasingly litigious nature of the community. As observed by D'Cruz (2016), litigation has become more prevalent in many areas of Australian society, and schools are not immune from increasing levels of legal claims. Stakeholders from a school's internal or external legal environments (for example, students, parents, interest groups, or others) are increasingly aware of their right to legally challenge decisions with which they disagree. As D. Butler (2007; Cumming & Mawdsley, 2005/2006; Wright & Melville, 2004; c.f. Wolff, 2013) has pointed out, they are increasingly willing to pursue their complaints through the courts. Together, these factors point to a need for principals to have enhanced knowledge of education law, or at least access to sound legal decision support.



Note: Data drawn from the Australasian Legal Information Institute database (University of Technology Sydney & University of New South Wales, 2017).

**Figure 16.** Australian High Court and State and Territory Supreme Court cases reported 1986 — 2015 where the case title included the search term 'school'.

Figure 16 shows something of the growth in important education law cases in Australia over the past three decades as an illustration of the trend toward litigiousness in education.

### ***Research.***

In his 1996 study, Stewart supported his claims regarding Australian educational legalisation by reference to earlier research conducted by Birch (1990), Ramsay (1988), Sungaila and Swafford (1988), and P. Williams (1994, 1995). The researcher was unable to locate more recent education law research regarding the current state of educational legalisation in Australia. Whilst the early studies remain instructive, they are now some 30 years old, and may not necessarily accurately represent the context faced by contemporary school leaders. This is an area which may warrant further investigation.

### ***Summary — Legal environment faced by principals.***

A summary of the literature review regarding the legal environment faced by school principals is at Figure 17.

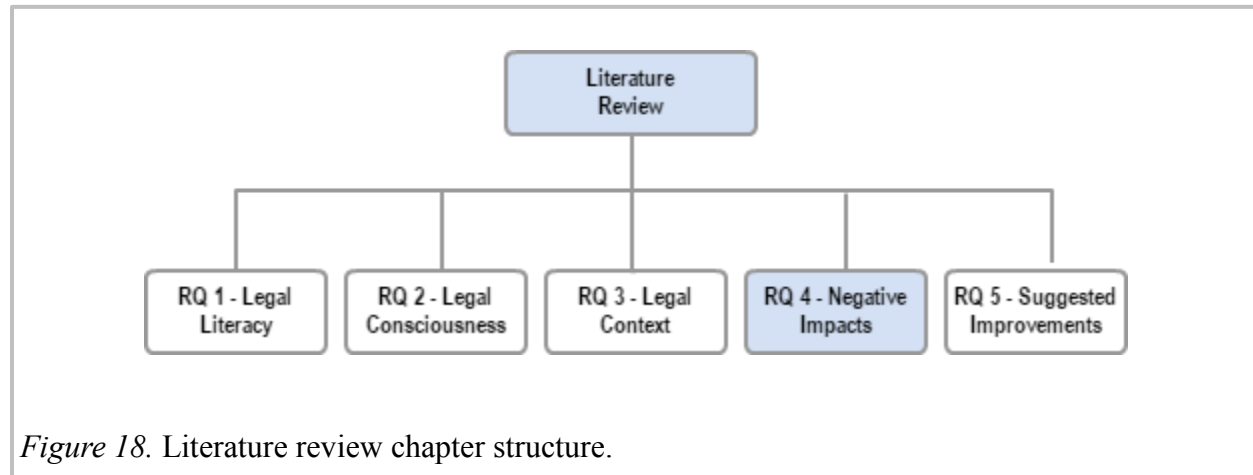
This section of the literature review addressed school legalisation, a social process evidenced by an increase in the number and scope of relevant legislation and judicial decisions, as well as a willingness amongst stakeholders to challenge decisions using legal mechanisms. Some contemporary examples of legalisation factors were discussed. It was, however, noted that the previous research regarding educational legalisation in Australia is now some three decades old, and has yet to be up-dated. There is scope for this topic to be researched further.

*Figure 17. Summary of legal environment faced by principals.*

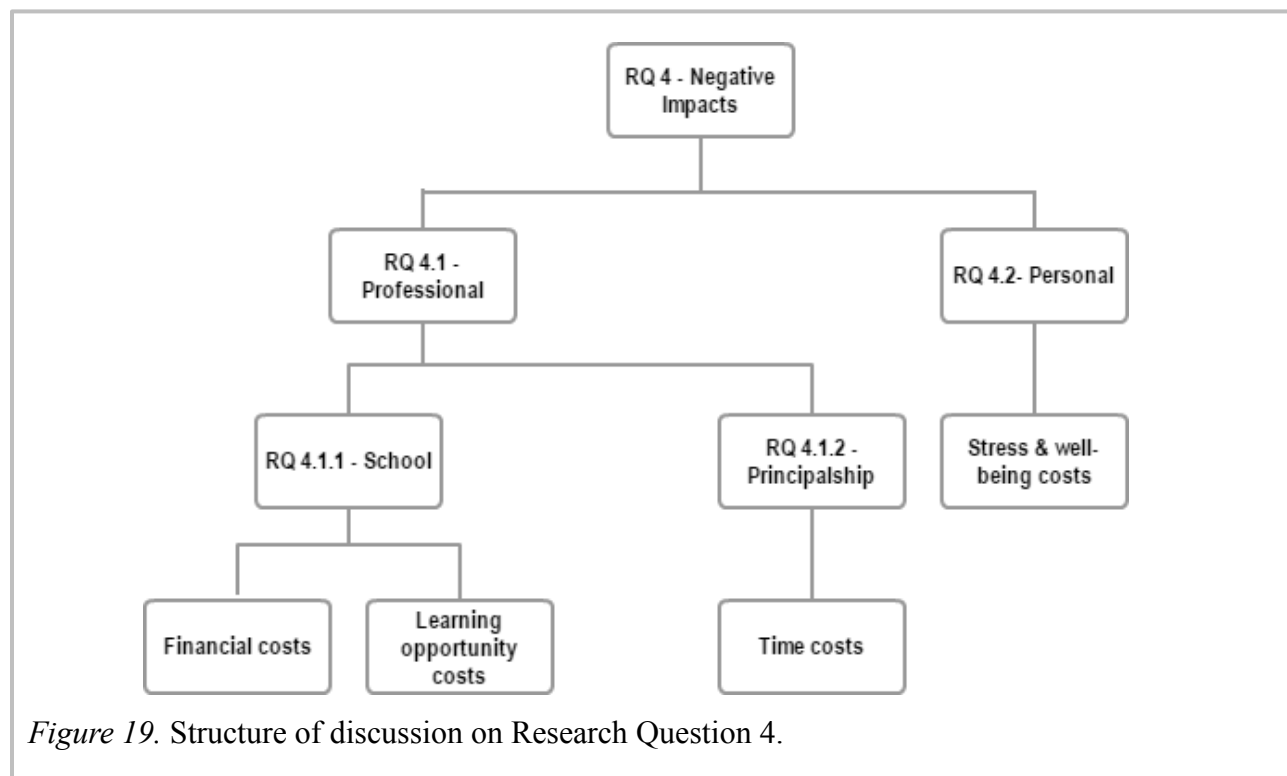
## **Research Question 4 — Do Tasmanian School Principals Recognise Any Negative Impacts from Dealing with Legal Matters?**

The structure of this literature review, showing the position of the constituent topics, including the negative impacts flowing from principals' legal dealings, is at Figure 18. Education law scholarship is replete with observations regarding its positive effects on schools and their stakeholders — protection of legal rights of students, parents, staff and the school (Eberwein, 2008); assessment of legal risk in academic and co-curricular activities to ensure that personal





safety is not jeopardised (Starr, 2012); and operation of a school that is “orderly, productive and humane” (Wagner, 2007, p. 6), likely to educate responsible and inclusive citizens (Shariff, 2004). Very little is written, however, about negative impacts flowing to schools and school principals as a consequence of legal issues. This section highlights a number of such negative impacts, discussed from the perspective of the school leader. A diagrammatic representation of the matters addressed in this section is at Figure 19.



**Financial costs.*****Literature.***

The financial cost of obtaining legal decision support may be an issue for some schools and principals. There are three main models of access to legal services by Tasmanian schools. Government schools obtain legal decision support from DoE legal officers at no cost. Catholic schools consult a private law firm retained by the Archdiocese, or in limited cases independent lawyers, the cost of which is met from the school's budget. Decision support for Independent schools comes from law firms in private practice. Some Independent schools may be sufficiently well-resourced that they can meet the cost of legal support without difficulty. However, other schools may find the cost of consulting lawyers to be problematic. The payment of such costs, which may be substantial, especially if litigation is involved, could mean that a school defers or sacrifices support for teaching and learning. In the alternative, a school principal may elect not to incur the cost and to deal with a legal issue without the benefit of professional legal advice. On this issue Novakovic (2015) has noted that schools with limited financial resources are increasingly spending money to defend legal matters involving parents, quoting a New Zealand principals' organisation as stating, "The cost of fighting litigious parents in court is paid for out of the school's operating budget, meaning less is being spent on educating students and supporting staff." (p. 2) The issue of the financial cost of legal services may present a significant challenge to some school leaders and a barrier to their accessing legal support.

***Australian research.***

In Stewart's 1996 study it was reported that 26% of participants had sought legal advice from "staff qualified in legal matters at Regional or Head Office" (1996b, p. 162) and that one participant had responded to an open-ended question about sources of legal information by nominating "solicitors" (p. 162). The issue of the cost of such legal advice and whether or not the school was required to pay was not addressed. In the follow-up study conducted by McCann (2006), the research revealed participants had obtained legal advice from a number of sources. No information was provided in relation to those sources or payment arrangements. Further, McCann (2006) reported that participants in his research had taken advice from "Community, Friend e.g., Solicitor" (p. 271), but no information was reported about costs involved.

### ***North American research***

Research in the United States indicates that the level of litigation against educational institutions, governance bodies, educators, and administrators is high, with no foreseeable likelihood of its falling (Sinopoli, 2010; Thorn, 2015; D. White, 2012). This imposes huge costs on schools, school systems, and their insurers (Brown, 2004; Eberwein, 2008; Valadez, 2005). Even so, the education law research base is largely silent regarding financial costs as a barrier to schools seeking legal decision support (c.f. Redfield, 2003, who discusses cost as an impetus for the settlement of claims). Canadian research also refers to the financial burden placed on schools by litigation (Findlay, 2007b; Mackay, 2008; Roher & Wormwell, 2000) but does not pursue the issue. This silence may reflect the particular insurance, funding, and budgetary arrangements in place in the education sectors studied, or perhaps the wider educational and legal structures existing in the relevant jurisdictions. Detailed information in relation to approaches that might assist schools in reducing the costs of obtaining legal decision support and representation is set out in Appendix I. A summary of the literature on financial costs of seeking advice is at Figure 20.

### ***Summary – Negative impacts: Financial costs.***

In Tasmania, government school principals obtain expert legal advice from DoE lawyers without charge. That is not the case for principals from non-government schools. The literature suggests that for some schools the financial cost of sourcing legal decision support may be a disincentive for seeking such support, or may mean that important educational resources must be foregone to meet the costs involved. Previous Australian studies acknowledged that participants obtain decision support from lawyers, but did not inquire further. North American research has recognized the burden placed on schools by litigation costs, but has not explicitly identified the cost of advice as a barrier to seeking legal support.

*Figure 20. Summary of negative impacts: Financial costs.*

### ***Learning opportunity costs.***

Within education law scholarship the benefits of preventative legal risk management (Stewart, 1996a, 1996b, 1998a, 2005) have been widely discussed (e.g., Eberwein, 2008; Findlay, 2007a, 2007b), and the process of risk assessment for out-of-classroom activities is familiar within

Tasmanian schools. Nevertheless, researchers and school leaders have observed that educators, especially school principals, can respond to the risk assessment of learning activities with an excess of caution (Barth, 2007; Cassidy, 2016). Adventurous learning involves some degree of risk and is accompanied by the possibility of legal liability for personal injury. The literature suggests some principals respond by cancelling such activities or placing restrictive conditions on their conduct that effectively undermine their teaching and learning value. This response is referred to as *excessive risk aversion*, a dysfunctional consequence of education law.

### ***Literature.***

The notion of *risk* is familiar in the fields of education law and educational leadership; McWilliam and Perry (2006) have gone so far as to assert that risk is a “ubiquitous imperative of modern living” (p. 97). Others have labelled contemporary Western society as “risk societies” (Hardy & Maguire, 2016, p. 86; also see Beck, 2006; Giddens, 1990) in which there is an increasing preoccupation with identifying and overcoming risks. The term bears a broad range of meanings (Cleary & Malleret, 2007; Dean, 2006; Starr, 2012). In the present context it is understood to refer to the probability that an event, adverse to an individual, group or organisation, will occur (Hardy & Maguire, 2016; McGing, 2013; McWilliam & Perry, 2006). Any decision involving the taking of action, or inaction, is liable to be attended by risk of a strategic, operational, financial or legal nature (Starr, 2012; Zoellick & Frank, 2005).

Starr (2012) argues that, given the heightened awareness of legal risk within the social realm, it should not be surprising that risk now plays a major role in education. Indeed, risk management procedures are mandated in all Tasmanian schools. For government schools risk is managed in large part through the DoE’s *Procedures for planning off-campus activities* (2014d). The equivalent document in Catholic schools is the *Risk and adventure policy* (Tasmanian Catholic Education Commission, 2013). Independent schools address risk management through the policy requirements for school registration (Schools Registration Board, 2015). Such policies generally require that a risk assessment process be undertaken before any outdoor education activity can be approved, and that the school principal must be satisfied that the proposed activities are safe, and any risks are minimised (G. Fisher, 2013). In the past, individual Tasmanian school leaders have been criticised for failing to adopt appropriate risk management procedures in relation to outdoor activities which have resulted in fatalities (Dutton, 1996; Holden, 2006; Levi, R., 2012). The present issue, however, does not rest on a lack of prudence.

Rather, it involves school leaders exercising an overabundance of caution, letting the potential for personal injury litigation overwhelm the educational benefit of an activity, with the result that the learning opportunity is not conducted or proceeds only in a sterilised form.

Cuban (2007) has suggested that, “Leadership that obsesses on sanctions and litigation becomes more than timid, it becomes impotent” (cited in Wagner, 2012, p. 31), portraying the pathology of excessive risk aversion in striking terms. Instances of a lack of appetite for legal risk overwhelming the educational benefit of an activity are often identified in the context of outdoor education and field excursions away from school premises, such as, “Travelling sports teams, field trips and transportation responsibilities increase the possibilities that something will go wrong” (Denker & Martocci, 2009, p. 26). The literature also identifies risk aversion to legal liability throughout the educational process. Examples include: banning students from undertaking experiments in chemistry lessons (Zirkel & Barnes, 2011); sterilising children’s outdoor play opportunities (Bundy et al., 2009; Little & Wyver, 2005); prohibiting school staff from touching students, or applying a Band-Aid to an injured knee (Tronc, 2009); and terminating work experience programs (Squelch, 20013; Starr, 2012).

#### ***Australian research.***

Stewart’s (1996b) research with Queensland Government principals offered ground-breaking insights into the impact of legal issues on the work of school leaders, particularly the need for schools to adopt preventative legal risk management. Stewart (1998a) later noted that it was, “rapidly becoming incumbent on principals, as part of their overall professional knowledge, to have sufficient understanding of school law to be able to implement legal risk management strategies in their schools” (p. 130). Despite the emphasis in his work on the minimisation of legal risk in school settings, neither Stewart’s (1996b) doctoral study nor that undertaken by McCann (2006), replicating Stewart’s methodology with Queensland Catholic school principals, addressed the possibility of principals adopting excessively risk averse decisions with consequent negative impacts on teaching and learning in the school.

The researcher acknowledged this issue in the qualitative findings of her small-scale exploratory study (Trimble, 2011; Trimble et al., 2012). The participants interviewed for that research suggested principals need a sound working knowledge of education law to determine and minimise legal risks, balanced against the learning objectives of the activities involved. One principal quoted in the study commented, “The biggest risk I think a principal can take is not to

take any risk. To not allow kids to experience new things, new challenges, you're taking their childhood away from them" (2011, p. 58).

***International research.***

United States and Canadian research shows more significant engagement with this issue, perhaps reflecting the substantially greater legalisation of school education in those jurisdictions. In 2008, Eberwein's national survey of school principals' knowledge of public school law examined, amongst other issues, the prevalence of school leaders changing decisions because of legal threat. Almost one third of participants indicated they had changed a discipline decision, and just under one fifth had changed decisions regarding school supervision, field trips, overseas and overnight travel, and termination of staff, due to legal threat. The researcher went on to observe that if the change to school programming or policy is based on incomplete or inaccurate legal information then, "Decisions to eliminate, or simply limit, a school program such as a sports team, school trip or an after-school opportunity has the potential to sterilise the educational experience of students." (p.189)

These findings are consistent with the results of Joyce's (2000; see also Burch, 2014; Thorn, 2015) 1999 survey of American public secondary and elementary school principals. In that study, 65% of participants reported terminating or modifying a school program because of liability concerns and legal costs. The activities included gym, shop, cheerleading, and band. The higher response level may reflect the inclusion of elementary school principals in the target population and the particular duty of care owed to younger and vulnerable students<sup>5</sup>.

Canadian researchers have also reported on the adoption of excessively defensive risk management by school administrators. Davies (2009) noted that, "There has been an observed increase in the fear of litigation amongst educators, which in turn impacts on educational practices" (p. 1). He went on to link an excessively cautionary perspective on the part of school principals to disadvantageous consequences for students. Similarly, Delaney (2009/10, 2013), who studied the views of undergraduate and post-graduate education law students in Newfoundland, Canada, found that participants expressed a level of fear in relation to negligence and legal liability and that this had the potential to impede or inhibit their decisional risk-taking particularly around planning field trips.

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<sup>5</sup> Interestingly, of the elementary school leader participants in the Joyce (2000) study, some two percent had eliminated playground recess due to concerns about lawsuits.

Outdoor education, that is, “curriculum-based learning and teaching that extends the four walls of the classroom” (New Zealand Ministry of Education, 2016, p. 4) is a particular focus of school education in New Zealand. The level of claims against schools for student injuries is low in New Zealand, possibly due to the statutory accident compensation scheme (Cranston, Trimble, & Allen, 2013; Hay-Mackenzie & Wiltshire, 2002) which bars claims for compensatory damages in personal injury actions. Nevertheless, there have been some studies on the impact of legal risk aversion. Sullivan (2006) reported a small-scale study in which she found outdoor education was a “site of anxiety about safety” (p. 6) and, importantly for the present discussion, a reduction of such activities over time. In later research Sullivan conducted with colleagues (Sullivan, Carpenter, & Jones, 2011), it was found that, for teachers employing a “safe practitioner” (p. 15) perspective, the risks involved in outdoor education warranted non-involvement and avoidance. The risks of risk avoidance were also acknowledged by Haddock and Sword (2004), who noted that, “Schools that ban EOTC [education outside the classroom] activities due to the risk of liability may risk losses to the education process instead” (p. 45).

***Summary — Negative impacts: Learning opportunity costs.***

A summary of the literature in relation to learning opportunity costs is at Figure 21.

Excessive risk aversion, or misunderstanding of negligence law, can lead principals to try to exclude every risk of injury to students and staff for fear of consequent litigation. A more balanced view rests on school leaders having a sound basic understanding education law. Only through accurate knowledge of the law of negligence and its application to schools, supported by up-to-date information on relevant court decisions and developments in education law, can school leaders realistically assess the legal risks involved in proposed activities (Stewart, 1996a, 1996b, 1998a, 2005; Teh, 2009).

*Figure 21. Summary of negative impacts: Learning opportunity costs.*

**Time costs.**

Hallinger and Murphy (2013) identify *time* as a crucial barrier to school principals fully and effectively enacting their roles as instructional leaders. Research in school leadership (Cranston, 2007) has established the intensification of the contemporary school principal's workload, involving more numerous and complex managerial tasks that can only be dealt with by working longer and longer hours (Duignan & Gurr, 2007). One such managerial task that consumes time and distracts from the principal's core mission involves dealing with legal issues.

***Literature.***

Allison (1997) points out that school principals face work days that are busy, unpredictable and lengthy, filled with wide-ranging, diverse, and complex tasks. This combination of complexity and volume creates the workload intensification frequently discussed within the school leadership literature (Drysdale, Gurr, & Goode, 2016; Organization for Economic Cooperation and Development, 2009; Pollock, Wang, & Hauseman, 2015a). In particular, the school leader's management role now includes legal accountability and compliance measures mandated by government (Klocko & Wells, 2015; Wells, 2013a; West, Peck, Reitzug, & Crane, 2014).

An important consequence of this role expansion (Stronge, Richard, & Catano, 2008) has been described as tasks taking, "time that principals do not have" (Pollock et al., 2015a, p. 556). School principals, both in Australia and overseas, are working notably long hours in order to fulfil their managerial and instructional leadership obligations (Cook, 2015; Kell, 2016; West et al., 2014). Riley (2017) has reported an increase in average working hours within the Australian principalship, with three quarters of school leaders working 51—56 hours each week during term time, and one quarter of principals working upwards of 61—65 hours each week.

It is clear from the literature that principals of Australian schools like their international counterparts experience intensified workload demands in which they face a greater number of more complex tasks, to be performed within more limited time (Duignan & Gurr, 2007; Pollock et al., 2015a). This work intensification model also applies to the legal workload of Australian school principals. Lock and Lummis (2014) have observed that the statutory frameworks which regulate the operation of schools in Australia are increasing in the number of subjects they address, as well as the standards they require to be satisfied. Further, they argue that the time required for a principal to ensure school compliance with such statutory frameworks is both high



and increasing; they estimate that school legal compliance takes between two hours to two days each week.

The flow-on effects of principals' workload intensification — including legal workload intensification — are important for individual principals, the schools they lead, and for the principalship as a whole. The research by Lock and Lummis (2014) into the impact of compliance requirements on principal workload found that, while participants acknowledged the importance of legal compliance, those obligations were seen as limitations on their role of leading teaching and learning. This finding reinforced Watson's (2009) conclusion that managerial practices, encompassing education law, distract school leaders from their most important role: leading teaching and learning (see also M. Anderson et al., 2008; Drysdale et al., 2016; Riley, 2017; Stronge et al., 2008). In terms of the effect of a high managerial, including legal, workload on the principalship as a profession, researchers (Pont, Nusche, & Moorman, 2008; Watson, 2009) suggest this may contribute to negative leadership aspirations among potential future school leaders. Indeed, the research undertaken by Thompson and Piazza (2015) found that experienced assistant principals who were well-positioned to become school leaders were largely uninterested in such advancement because, "The hours are long, the administrative timelines unrealistic and legislative demands are continually being added to the growing pile of work requirements" (p. 6).

If writers on the legalisation of Australian education are correct, legal issues in schools are only going to increase in years to come. The literature offers limited suggestions to improve the situation. School principals are vested with certain legal rights and obligations in relation to the operation of their schools, for which they are legally responsible (M. Anderson et al., 2008); many such duties cannot validly be delegated. There are however some legally-related matters which can be shared within a framework of distributed leadership (Organization for Economic Cooperation and Development, 2009; Pont et al., 2008; Watson, 2009) to reduce the principal's overall workload somewhat. Targeted professional learning and development for aspirants and principals (Thompson & Piazza, 2015) might also support school leaders in dealing with routine legal issues more expeditiously and in resolving non-routine problems more quickly by obtaining legal decision support earlier in proceedings.

*Australian research.*

The amount of time spent by school principals in dealing with legal problems was examined in the study conducted by Stewart (1996b). Although that study focused on the time required to deal with legal problems as a factor contributing to participants' levels of stress associated with legal matters, Stewart concluded that "Attending to legal matters is time consuming and leaves less time and other resources for instructional leadership." (p.232) Stewart (1998a), subsequently noted 78% of participants indicated that they spent up to 10% of their working week on legal matters, 18% spent between 10-20% of their time, and 4% spent over 20% of their time on legal matters. When the Stewart (1996b) methodology was replicated by McCann (2006), participants were also asked about their time spent on legal matters. Some 83% of participants reported spending less than 10% of their week on legal issues; 13% spent between 10—20% of their time; 3% of participants spent 20—30%; and 1% spent more than 50% of their working week dealing with legal matters. The written comments accompanying the results emphasised that the time varied from week to week, depending on what was occurring in the school. Again, time taken up by legal issues was identified in the study as a source of stress for school principals. The small-scale study (Trimble, 2011) conducted by the researcher in Northern Tasmania reported participants' estimation that they spent up to an hour each day dealing with legal issues, with the observation being reiterated that the time required depended on the issues at hand.

*North American research.*

Studies from the United States have also examined the time spent on legal matters by school principals. Joyce (2000) found 20% of participants reported spending between five and ten hours each week in meetings and documenting events to avoid litigation. More recently, in Eberwein's national research (2008), around half of the participants stated that they spent one to two hours weekly preparing and organising documents to avoid or prepare for a legal challenge. However, in considering such findings, the high level of American education law litigation must be taken into account. It is generally accepted that the level of litigation against Australian schools and educators is considerably lower than in the United States (Mawdsley & Cumming, 2008; Shorten, 1996; Stewart, 2005).

The only other jurisdiction with reported research regarding the time taken by school principals to deal with legal problems, and then only in the most general terms, is Canada. In their study of school teachers and administrators, Leschied, Lewis and Dickinson (2000)

observed that around one third of their participants, “encountered legal situations daily or almost daily” (p. 40). Davies’ (2009) review of education law literacy in Canada noted administrators were, “spending valuable time keeping a lot more documentation than in the past for protection” (p. 5; see also Gullatt & Tollett, 1997).

***Summary — Negative impacts: Time costs.***

A summary of the literature in relation to the time costs of principals’ dealings with legal issues is at Figure 22.

This section of the literature review has examined the time costs of principals dealing with legal problems. Research, both in Australia and overseas, has demonstrated that in the general context of increasing workloads and longer working hours for school principals dealing with legal matters further takes up substantial amounts of time and takes principals away from their core activity of leading teaching and learning. This situation may be relieved, to some degree, through delegation and improved legal training of principals.

*Figure 22. Summary of negative impacts: Time costs.*

**Costs in legal stress.**

***Literature.***

Changes within the legal environments of schools and the role of the school leader have created a new framework of demands on school principals in Australia and internationally (Dewa et al., 2009; Lock & Lummis, 2014; MacBeath, O'Brien, & Gronn, 2012; Pont et al., 2008); The responsibilities borne by a school principal are now both greater in number, and in complexity, than at any previous time in the development of the principalship in Western education (De Jong, Grundmeyer, & Yankey, 2017; P. Hall, Childs-Bowen, Cunningham-Morris, Pajardo, & Simeral, 2016). This combination of increased workload and work intensification (Drysdale et al., 2016; Lock & Lummis, 2014; Pollock, Wang, & Hauseman, 2015b) contributes to Australian school principals in general, and Tasmanian principals in particular, experiencing high levels of *job stress* (Australian Education Union, 2015; McKenzie, Weldon, Rowley, Murphy, & McMillan, 2014; Riley, 2017). A number of authorities define *job stress* in terms of an, “adverse reaction experienced by workers when workplace demands and responsibilities are greater than the

worker can comfortably manage or are beyond the worker's capabilities" (Safe Work Australia, 2013, p. 1). That meaning was adopted for the present study.

Literature regarding educational leadership suggests that school leaders in Western education systems are exposed to an increasing load of stressors and are feeling their effects (De Jong et al., 2017; Dewa et al., 2009; Robbins, 2013). Indeed, Klocko and Wells (2015) describe principals' stress as "ubiquitous" (p. 333). In 2009, Watson observed:

Over the past decade many Australian research papers and reports have documented negative aspects of the principalship that revolve around high levels of work-related stress. The stress appears to have been caused by too much work; tension between the types of work, such as educational leadership versus management; and the stress of working in a "fishbowl", under the critical eye of parents and the media. (p. 11)

Little appears to have changed in the intervening period (Drysdale et al., 2016; Maxwell & Riley, 2017). According to data collected in the *Staff in Australia's Schools Survey* (McKenzie et al., 2014) the average working week for Australian principals is 56.2 hours (primary schools) and 58.5 hours (secondary schools), in contrast to the average hours worked by non-managerial employees of 38-40 hours (Australian Bureau of Statistics, 2014; see also Anderson, 2008; Australian Education Union, 2015). When asked for their views on strategies to help retain school leaders in the profession, almost three quarters of participants suggested a reduction in the workload (McKenzie et al., 2014).

The *Australian Principal Occupational Health, Safety and Wellbeing Survey (Principal Wellbeing Survey)* (Riley, 2017) has collected national data on principal and deputy principal wellbeing, annually, since 2011. Relevant findings include the following.

- Participants' average working hours remained stable, with 55% working, on average, 51-56 hours each week, and 27% working 61-65 hours each week: "too high for a healthy lifestyle to be maintained" (p. 13).
- Participants reported higher job satisfaction than the general population, confirming that, despite problematic stress levels, Australian principals are satisfied with their occupation (Cranston & Ehrich, 2002; Cranston et al., 2003; De Jong et al., 2017).
- Principals reported high levels of job and emotional demands, and emotional labour, compared to the general population. This positively correlated with higher levels of burnout and stress symptoms. Tasmanians principals report a rate of burnout equal

highest among the Australian States and Territories. (Drysedale et al., 2016; Maxwell & Riley, 2017)

- The greatest stressors for all participants, across Australia and all three schooling sectors, were found to be workload, and lack of time for teaching and learning.
- Principals experience “far higher prevalence” (p. 16) of offensive behaviour in their workplaces than do the general population. In adult-to-adult bullying, the participant rate was over 4.3 times higher than in the general population, and the rates of actual violence were eight times higher. In 2016, almost one in every two participants had been threatened with violence during the preceding year.
- When the results for offensive behaviour (including sexual harassment, threats of violence, physical violence, bullying, unpleasant teasing, conflicts and quarrels, and gossip and slander) were examined on a State basis, Tasmanian principals rated highest on all but one of the listed categories and the trends in Tasmania are increasing.

The *Principal Wellbeing Survey* (Riley, 2017) collected information on nineteen specific stressors, of which fifteen have an apparent connection to legal issues. A list of those stressors is set out in Appendix J.)

Although the Australian education law literature confirms that principals suffer *legal stress* (Stewart, 1996b, 1998a) there is limited discussion concerning the personal, professional and organisational costs of such pressures. Table 8 provides a comparison of symptoms and signs drawn from the literature which may result from work-related legal stress. It is clear from the breadth of the indicators described that the impacts may be serious and far-reaching. Nonetheless it should be acknowledged that the relationships and causality in this area are far from simple. Much depends on whether the stress is short-lived or chronic, the strength of the particular stressor or stressors (Nixon, Mazzola, Bauer, Krueger, & Spector, 2011; Safe Work Australia, 2013), and differences in individual coping mechanisms and personal characteristics (Chaplain, 2001; Dewa et al., 2009; Robbins, 2013).

Table 8

*Possible Consequences and Symptoms of Workplace Stress*

Consequences/ Symptoms	Literature		
	Klocko & Wells (2015)	Wells (2013b)	Safe Work Australia (2013)
Personal –			
▪ Emotional	Anxiety, exhaustion, frustration, depression, unhappiness, anger	Anxiety, irritability, burnout (emotional exhaustion)	Anxiety, irritability, depression, burnout, aggression
▪ Physical	Hyperarousal, muscle tension	Sleep problems, dizzy spells, headaches, muscle tension	Sleep problems, headaches, fatigue, upset stomach
▪ Health	High blood pressure	High blood pressure, heart attacks, nervous stomach	High blood pressure, stroke, heart attacks, cardiovascular disease, musculoskeletal disease, infections, diabetes, high cholesterol
Professional –			
▪ Mental	Anxiety, depression	Anxiety, burnout	Anxiety, depression, burnout
▪ Behavioural	Low productivity, absenteeism	Absenteeism, substance abuse, poor work performance, accidents	Alcohol abuse, smoking, poor diet, physical inactivity
Organisational	High attrition rates and potential principal shortages		

Note: Data drawn from “Workload pressures of principals: A focus on renewal, support, and mindfulness” by B. Klocko and C. Wells, 2015, pp. 332-355, *NASSP Bulletin*, 99(4); “Principals responding to constant pressure: Finding a source of stress management” by C. Wells, 2013, pp. 335-349, *NASSP Bulletin*, 97(4); “*The incidence of accepted workers’ compensation claims for mental stress in Australia*” by Safe Work Australia, 2013, Canberra, ACT: Safe Work Australia.

While the individual cost of legal stress to principals may be serious the consequences may also impact on schools, the education system, and the wider economy. Stress is linked to reductions in school leaders’ creativity and productivity (Sorenson, 2007; West, Peck, & Reitzug, 2010; West et al., 2014). Klocko and Wells (2015) have pointed out that high levels of stress can detract from work success, leading to more stress overall. In terms of the education system, the issue of legal job stress links with principal recruitment and succession (Cranston et al., 2003; Klocko & Wells, 2015; Pont et al., 2008; Thompson & Piazza, 2015; West et al., 2014).

Notwithstanding debate regarding the purported principal shortages in Australian educational jurisdictions (Barty, Thomson, Blackmore, & Sachs, 2005; Gronn & Rawlings-Sanaei, 2003; Watson, 2009), there is some consensus in the literature that the high levels of job stress experienced by school principals in this country — particularly related to the managerial responsibilities required of school leaders — may deter some potential aspirants from seeking promotion to the principalship (Cranston, 2007; Curtis, Evans, & O'Connor, 2010; S. Simon, 2015; Thompson, 2013).

The literature on school principals' work-related stress, which includes legal stress, offers two categories of response. The first is based on strengthening the stressed individual's coping strategies (stress management), whilst the second involves intervening to reduce the impact of what causes stress (stressor management). Stress management includes a broad range of strategies which may be beneficial for school principals at risk of legal stress, including: training in assertiveness techniques, and time and conflict management (Leka, Griffiths, & Cox, 2004); work-life balance (Cranston, 2007; Wells, 2013b); social and emotional learning (Jones, Bouffard, & Weissbourd, 2013; Poirel & Yvon, 2014); physical health programs and intellectual, social, and spiritual support (Gmelch, 1988); and social support, both personal and from colleagues and superiors (Gmelch, Gates, Parkay, & Torelli, 1994; Robbins, 2013; Stansfeld, Bosma, Hemingway, & Marmot, 1998). Mindfulness meditation has also been suggested in respect of psychological stress and improved health states (Beisser, Peters, & Thacker, 2014; Wells, 2013b).

Safe Work Australia (2013) has argued that work-related mental stress is, “a significant issue for employees, employers and the broader economy, and should be dealt with at an organisational level as well as at an individual level” (p. 5). Action at the systemic or organisational level to limit the adverse consequences of workplace stress involves the provision of training, and work redesign (Leka et al., 2004; Ongori & Agolla, 2008; Safe Work Australia, 2013). A more detailed discussion of approaches to stressor management is set out in Appendix K.

### ***Australian research.***

The Stewart (1996b) study explicitly addressed the topic of stress caused by school-related legal matters. The researcher found 76% of participants felt that dealing with legal matters caused them stress; just under a third indicated that legal matters caused them more stress than other

areas of administration; and 77% responded that they experienced more legal stress than in previous years. When participants ranked activities that caused them most legal stress, the top three were management of legal problems, lack of legal knowledge, and concern about legal repercussions. Stewart concluded “stress could be a major problem for principals” (p. 208).

McCann (2006) also investigated the issue of legal stress. The findings from that study were largely comparable to the results reported by Stewart a decade previously, although a higher proportion of participants considered legal stress to be greater than other administrative stress. This possibly reflected differences in training or institutional support between the populations of participants. When compared with the Stewart (1996b) findings regarding activities causing the greatest stress, the McCann (2006) results were noticeably different. The highest reported legal stressors were: handling emotions and conflict; duty of care issues; concern about legal repercussions; lack of legal knowledge; management of legal problems; staffing issues; threats of legal action; and personal accountability. Although McCann did not offer an explanation regarding the differences in results between the two studies, it is suggested that the varying outcomes may reflect, in part, changes in the law and education policy, particularly in terms of duty of care, and overall legalisation, as well as the pastoral emphasis within the Catholic education system. The small scale study conducted by the researcher in 2011 (Trimble, 2011; Trimble et al., 2012) did not examine the issue of school principals’ legal stress.

### ***International research.***

The United States research base reveals a modest collection of studies concerning legal issues as a cause of school principal stress. In their early research, Swent and Gmelch (1977) surveyed more than 1,000 Oregon school administrators and found that participants listed compliance with State, Federal, and organisational, rules and policies as their most frequent source of stress. A pilot study by Johnson and Duffett (2003) examined data collected by the influential not-for-profit body, Public Agenda, and made the explicit observation that, “Litigation and the threat of litigation often take a personal toll on professionals in education. An unwarranted change and/ or the prospect of dealing with litigation can create enormous anxiety and anguish, sometimes enough to derail a career.” (p. 3) In doctoral research on levels of school principal stress, Clash (2006) found participants perceived their stress levels as high to very high when working with various legal issues. Carlin (2010) also investigated principals’ legal stress in relation to the *No Child Left Behind Act 2002* (US), which substantially increased school accountability for student



outcomes and imposed sanctions on principals of non-compliant schools. Surprisingly, participants in that study reported that implementation of the legislation caused them a moderate amount of stress, but not enough for them to consider changing careers over.

The research on school principals' legal stress in Canada presents a similar picture. In an early study by Washington (1982) participating principals reported six general areas of concern: central administration demands; teacher supervision; relationship with parents; government regulations; student problems; and instructional problems, which areas all have possible legal implications. In 2001 T. Williams (see also Dewa et al., 2009) surveyed public school principals and found the two top factors contributing to principal work dissatisfaction both involved Provincial education reforms implemented through legislation. More recently, research for the Ontario Principals' Council (Pollock, 2014) found that around 70% of school leader participants expressed concern over legislatively-mandated programs in their schools. Participants also identified as stressors several other issues having a legal component or consequences, including: dealing with unions; special education; student discipline; conflict with parents; and under-performing teachers (see also Poirel, 2009 who studied a group of Quebec principals).

The relevance of North American research to Australian education law is firmly established (Mawdsley & Cumming, 2008). However, it can also be interesting to examine comparable research from non-Western jurisdictions to see what differences or similarities emerge. The studies undertaken by Teh (2008, 2009) concerning education law in Singapore are valuable in this regard. In pilot research with a mixed sample of Singaporean and Australian principals, Teh (2008) reported that, "Legal matters caused more stress than they had in previous times" (p. 43). That finding was confirmed in her doctoral study with Singaporean school principals. Participants expressed unanimous agreement that legal matters caused them stress, and that such matters were more stressful than in previous years. Doctoral research, that examined principal job stress more generally, was conducted by Li (2006) in Hong Kong. Li found the highest-ranked job stressor reported by participants to be *complying with government and organisational rules and policies*, often based in legislation. Researchers in Macao (Wong & Cheuk, 2005) working with kindergarten principals also rated *difficulty with complying with government regulations* as the fourth highest stressor for participants from a list of 17 options. Whilst these jurisdictions have differing educational models and governance frameworks the

examples suggest that aspects of education law may be a job stressor for school principals around the globe.

***Summary — Negative impacts: Costs in legal stress.***

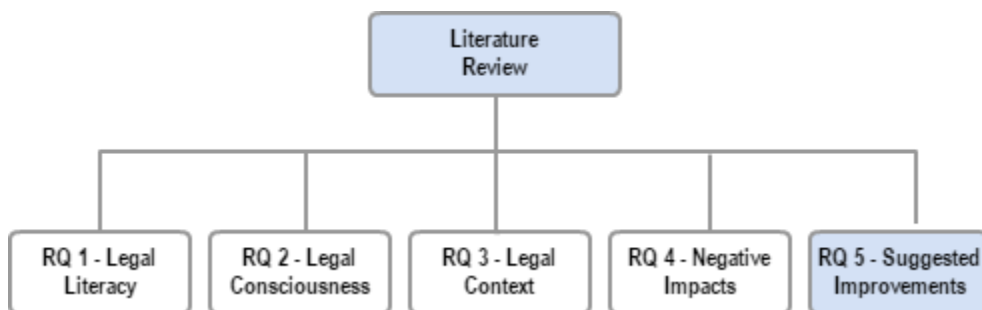
A summary of the literature regarding school principals' legal stress is at Figure 23.

Australian school principals are experiencing increasingly high levels of job stress, which can have negative and serious impacts personally, professionally and organisationally. The legal management and compliance responsibilities they bear are stress factors which can contribute to their overall levels of job stress. The literature contains strategies that may assist school principals with stress management (to reduce the stress response to workplace situations), as well as stressor management (involving the restructuring of legal responsibilities and organizational positions). Education law research in Australia, as well as overseas in North America and Asia, confirms that legal stress is a widespread problem for school principals.

*Figure 23. Summary of negative impacts: Costs in legal stress.*

**Research Question 5 — How Do Tasmanian School Principals Suggest Their Education Law Support Be Enhanced?**

The structure of this literature review, showing the position of the constituent topics, including principals' suggestions for enhanced legal support, is at Figure 24. This section addresses ideas



*Figure 24. Literature review chapter structure.*

within the education law knowledge base for improving school principals' dealings with legal issues. Despite variations in the ideas raised in the literature, a dominant, overarching theme can be discerned regarding the need to strengthen the quality of legal knowledge held by school leaders.

### ***Literature.***

The editor of the *New York Times* for almost 30 years, Arthur Hays Sulzberger (1948) noted, "A man's judgement cannot be better than the information on which he has based it", an observation that applies equally well to the practice of education law as to newspapers. Legal and education experts throughout the common law world have, for decades, decried educators' lack of legal knowledge (e.g., Davies, 2009; Militello, Schimmel, & Eberwein, 2009; Reglin, 1992; Stewart, 1996b, 1997, 2005). Various strategies have been proposed to build school leaders' legal capacity with the overall aim of improving decision making and enhancing the school environment for student learning (C. Adams, 2013; Braye, Preston-Shoot, & Johns, 2006; Taylor, 2011). But how much legal knowledge do school principals need? The literature expresses a consistent message that school principals do not need to become lawyers or obtain law degrees (e.g., Stewart, 1996b, 1997, 1998a). Redfield's proposal (2001, 2003; see also Russo, 2005; Schachter, 2007) — that school leaders should know the *basics* of education law, that is, "enough to anticipate legal problems and avoid them by preventative action, or if not avoid them, at least know when to call for legal counsel early in the dispute" (2001, p. 6) — offers a practical goal.

### ***Legal knowledge from preparation programs.***

Although views in the literature concerning deficiencies in principal preparation are many and varied, something of a consensus has developed among Western experts concerning the importance of principal preparation and the characteristics of effective programs (Cranston, 2013; Gurr & Drysdale, 2015; Lumby, Crow, & Pashiardis, 2009; M. Young, 2015). It is in the context of principal preparation that many future school leaders develop their foundational understandings regarding education law (Duncan, Range, & Scherz, 2011; Militello, Gajda, & Bowers, 2009). Training in education law for future school leaders is crucial for their legal effectiveness (Daresh & Playko, 1994; Hewitson, 1995; Valadez, 2005). Such legal training should be accurate, well-structured, and relevant to the needs of participants.

*Legal knowledge from continuing professional development.*

Literature around continuing professional development (CPD) for principals makes it clear that the acquisition of professional knowledge and skills is not a finite process. It does not end with completion of a leadership preparation program or appointment to a principalship position (Lumby et al., 2009; McCulla & Degenhardt, 2016; Watson, 2009). Rather, as Adams and Copland (2007; see also Hackmann, 2016; Vogel & Weiler, 2014) have pointed out, leadership preparation, “represents only entry-level knowledge and skills” (2007, p. 158) which does not obviate the need for CPD (Duncan et al., 2011; Manna, 2015). It is through the CPD framework that principals may, at different stages of their careers, build on their initial knowledge base and up-date their understandings in light of environmental changes (Berkowicz & Myers, 2016; Miller, 2015; Organization for Economic Cooperation and Development, 2011).

In the Australian context, the general landscape of school leaders’ knowledge base, including their understandings of education law, should be informed by the *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012a, 2012b; Cranston, 2013; Duncan et al., 2011; Ingvarson, 1998). In 2012 AITSL released the *Australian charter for the professional learning of teachers and school leaders* (the *Charter*) which describes the importance and characteristics of high quality professional learning in improving teacher and school leader practice. The *Charter* (Australian Institute for Teaching and School Leadership, 2012a) states that, “Professional learning will be most effective when it is relevant, collaborative and future-focused” (p. 4). It also refers to the need for learner reflection and conscious improvement of practice, which effectively adds a further characteristic of *continuity* (Getenet, Trimble, & Nailon, 2013).

Although the literature on incorporating legal content into school leadership CPD is limited, the available resources consistently emphasise the need for principals to increase their legal knowledge throughout their careers. As Roher and Freel (2002) counsel:

Educators must endeavour to stay informed and constantly upgrade their knowledge regarding policies, procedures and the law. They should be in contact with their colleagues on a district-wide basis with respect to their school practices, attend in-service programs on new and emerging education law issues and constantly peruse articles, newsletters and texts pertaining to the *Education Act*. (p. 5)

*Legal knowledge from lawyers.*

Twenty years ago, Heubert (1997) noted that, “There has been little school law literature to date focusing on educator-lawyer collaboration” (p. 534), and the present situation is little changed. Nonetheless, the available literature concerning the relationship between education lawyers and school principal advisees (Davies, 2009; Heubert, 1997; Mackay, 2008; Redfield, 2001, 2003) strongly suggests that school leaders should establish a close, collaborative working relationship with their legal advisers.

A foundational assumption of education law literature is that school leaders require legal advice when a legal issue becomes the subject of litigation: at the *claiming* stage of the legal dispute process (Felstiner, Abel, & Sarat, 1980). However, Heubert (1997) and more recent writers propose that school principals should also consult their legal advisers in other circumstances, for example:

- when dealing with issues where the legal standard has converged with educational practice, as occurred with the education of students with disabilities;
- in establishing the extent of a school leader’s decision making authority and discretion and
- in exercising preventative law and alternative dispute resolution options to avoid litigation. (Heubert, 1997; Mackay, 2008; Redfield, 2001, 2003; Schimmel, Militello, & Eckes, 2011)

In short, the literature proposes strengthening the legal knowledge school principals receive from their lawyers through increased consultation—more frequent meetings, and on a broader range of topics—and earlier intervention in the legal dispute process.

*Legal knowledge from Systemic staff.*

Education law literature has little to say about legal decision support provided by systemic and Departmental staff to school principals perhaps due to organisational differences between jurisdictions. Nevertheless, some general points can be identified. Firstly, it is clear that American public school principals frequently turn to their organisational supervisors (school district superintendents) for advice in dealing with legal issues. That advisory role, together with their responsibilities in briefing legal counsel on behalf of the school district, demands that superintendents, “must have a solid appreciation of the law ... and adeptness in working with its nuances and subtleties” (Davies, 2009, p. 4). Secondly, the depth of legal knowledge and

experience held by superintendents permits them to deal with day-to-day school issues without the need to seek expert legal advice (Corkill & Hendricks, 1997; Redfield, 2003). As such, superintendents' accurate knowledge of education law and its application to school operations, informed by their legal training and experience, is critical to the effective and efficient management of legal issues at school level. It may reasonably be argued that Tasmanian principal network leaders should meet a similar standard in terms of their knowledge of education law.

*Legal knowledge from informal sources.*

School principals do not only consult formal sources of legal information such as lawyers and organisational superiors when faced with legal issues. In many, perhaps even in most, instances the literature suggests that principals seek advice from colleagues or rely on their personal intuition (Davies, 2009; Findlay, 2007b). This behaviour may create difficulties if the personal knowledge relied on is inaccurate, out-of-date or inapplicable. The most obvious approaches to strengthening the quality of such informal legal advice involve improvement to the education law preparation of aspiring school principals, together with regular, comprehensive CPD on legal issues for school leaders throughout their careers (Stader, Graca, & Stevens, 2010).

*Legal knowledge from pre-service teacher training and teacher CPD*

At first glance the legal training of aspirant and practicing teachers seems to fall beyond the scope of the current research. Nonetheless, it has been included for a number of reasons. Firstly, in relation to pre-service teacher preparation, if recently-qualified teachers have developed an accurate understanding of their own and their students' legal rights and obligations through pre-service study they will be equipped to make legally sound decisions in the classroom, and fewer legal issues may arise for the principal to resolve. Further, Australian school leaders are almost always recruited from the teaching population. As such, pre-service education law training constitutes the foundational professional legal understanding to be built on further during a principal's career. Secondly, when principals have sound education law knowledge they are well-placed to conduct legal professional development for their staff, dispel myths, and improve legal practices and decision making in the classroom (Reglin, 1992; Schimmel et al., 2011; Wagner, 2007).

*Australian research.*

Australian research on possible improvements to school principals' legal dealings again begins with Stewart's (1996b) seminal study. A critical conclusion reached by Stewart was that, "Principals in general appear to have low levels of knowledge of school law, [and] those taking up their first appointments are at greatest risk." (p. 236) To strengthen principals' legal professional knowledge, Stewart proposed that education law should be explicitly addressed in principal preparation and induction courses for aspirants, and in-service education for practicing principals. Stewart also recommended that the content of principal in-service training should be more focused, as well as being more geographically dispersed, and frequent, than in the past. In addition he suggested that the legal information provided in the Queensland Department of Education Manual should be extended.

In the McCann (2006) study, generally similar findings were reported although the implications drawn from them raised a number of interesting issues. McCann (2006) noted that, "Principals' understandings of legal issues need developing, and then updating" (p. 430) an observation which has become normative in education law research (Eberwein, 2008). He then went on to state that, "this could well apply to others who support them in their roles" (p. 430) acknowledging a wider need for education law preparation and CPD. McCann also made a number of other pertinent recommendations including: the provision of compulsory education law units in teacher preparation, as well as in leadership development courses; regular updating of systemic handbooks; and principals' access to lawyers for advice as required.

*International research.*

The body of research concerning school principals and education law in the United States is considerable, and almost every researcher has proposed some means to strengthen the legal knowledge and practice of school leaders. Common recommendations have addressed such issues as: pre-service teacher preparation (Gajda, 2008; Littleton, 2008; Schimmel & Militello, 2007); teacher CPD conducted by school leaders (Militello, Schimmel, et al., 2009; Schimmel et al., 2011); principal preparation (Brabrand, 2003; Clark, 1990; D. Davidson, 1999; McHatton, Boyer, Shaunessy, Terry, & Farmer, 2010; Singh, 2015); and principal CPD (Power, 2007; Reglin, 1992; D. White, 2012).

The national study conducted by Eberwein (2008) into secondary school principals' knowledge of public school law is largely representative of the themes arising from the American

literature, and as such his recommendations for strengthening the education law knowledge base of school leaders warrant closer consideration. As a starting point, Eberwein (2008) suggested that, “Ensuring that educators, both school leaders and teachers, have opportunities to learn and practice preventative school law is critical.” (p. 192) In the tradition of Schimmel and Militello (2007), he also proposed that school principals must assume the roles of chief law instructors in their schools. Eberwein’s (2008) made the following recommendations.

- Establishment of a national school law curricular framework, for teachers and school principals, informed by research.
- Adoption of mandatory school law training, with input from major professional bodies, for professional qualification.
- A high quality, standards-aligned preparation course in school law for principals, including a solid legal foundation, a comprehensive orientation to legal resources, and development of law teaching skills.
- A requirement for principals to attend at least one school law refresher course every three years, to reinforce foundational legal understandings and provide up-to-date information.
- Preparation of a digital collection of ready-to-use law lesson plans developed in conjunction with practicing school law lawyers.

Although the body of Canadian education law research concerning school principals’ legal knowledge is considerably smaller in volume than that of the United States, its recommendations generally reflect the proposals arising from American studies. These include recommendations concerning teacher preparation, legal CPD for teachers – including the possibility of CPD being conducted by a professional association, the legal preparation of aspirants to the principalship, legal CPD for serving principals, and a number of related matters including the provision of legal CPD to superintendents who advise school leaders on legal issues (T. Cooper, 2011; Findlay, 2007b; Leschied et al., 2000; Scarfo, 2010; Stelck, 2009). A summary of the literature regarding principals’ suggestions for enhanced legal support is at Figure 25.



A common theme in education law literature and research relates to the need to improve legal decision making by school principals, in particular the quality of legal information they rely on, whether from their own resources or their peers, from system advisers, or lawyers.

Proposals for improvement relate to pre-service teacher training and professional development, as well as principal preparation and development in education law.

*Figure 25. Summary of suggested enhancements to principals' legal support.*

### **Chapter 2 Overview and Chapter 3**

This chapter reviewed the literature and research concerning the impact of education law on Tasmanian school principals. In doing so it addressed the extensive subject of principals' legal literacy, in terms of areas of law dealt with, legal knowledge and confidence, and sources of legal information, their legal consciousness, the legal context they face, negative impacts flowing from their legal dealings, and strategies proposed to improve their decision support. The chapter has examined academic scholarship relating to the research questions for this study, as well as previous Australian and overseas research, the latter principally from the United States and Canada, both jurisdictions with well-established education law traditions.

The next chapter, the *Conceptual Framework*, draws on the key findings of this literature review. It takes up the idea of the legal context faced by school principals, from which education law issues arise, to develop a model of the school's internal and external legal environments. The model reflects the organisation theory of open systems. The *Framework* underpins the research detailed in the remaining chapters, informing the research methodology and the analysis and discussion of findings.

### Chapter 3

#### Conceptual Framework

In Australia, schools and law applying to them have developed in new directions in recent years. Education law has increasingly been recognised as a field of academic interest (Mawdsley & Cumming, 2008), a specialised area of legal practice (Tronc, 2009), and a matter that impacts the work of school principals both regularly and frequently. There has, however, been limited consideration given to the school's legal context or the organisational relationship between the school and its legal environment. This chapter examines the open system model of schools and the law, which has provided the broad theoretical basis for education law study during the past decades, and proposes a refocusing in light of developments in organisation theory and recent research. The resultant model is then used throughout this thesis.

#### Conceptual Framework

As is the case with many expressions within the Social Sciences, current usage of the term *conceptual framework* is vague and imprecise (Jabareen, 2009). Indeed, research literature reveals two fundamentally different understandings of what it is and the function it fulfils. One view, exemplified by the approach of Rudestan and Newton (1992), suggests a conceptual framework is, "simply a less developed form of theory" (p. 6), or a causal network linking concepts to empirical data providing a reference point for the interpretation of research findings (May, 1993; Merriam & Simpson, 2000). In contrast is the view proposed by Jabareen (2009) of a conceptual framework as, "a network of interlinked concepts that together provide a comprehensive understanding of a phenomenon." (p. 51) A conceptual framework constructed within this understanding provides a structured and ordered perspective into the key concepts of the research project (Leshem & Trafford, 2007). The present study adopts the latter approach. It relates concepts, empirical research, and relevant theories (Rocco & Plakhotnik, 2009) about systems and organisations to advance and systematise knowledge developed in this study about the impact of education law on school principals.

#### Organisational Theory and Schools

Before proceeding to consider the legal environment of schools, it is instructive to highlight some foundational concepts from the literature of organisational environments. *Organisations*

are social groups that have a purpose or goal (Parsons, 1956; Pfeffer & Salancik, 1978/2003), a categorisation which includes schools. The systems perspective sees organisations as embedded in their environments (Edelman, Leachman, & McAdam, 2010; Haveman, 2000). The *external environment* of an organisation is, “everything beyond the boundaries of the system that can directly or indirectly affect performance and outcomes.” (Cummings & Worley, 2014, p. 90; see also Goldring, 1995) There is not a single unitary external environment for an organisation, but rather diverse environments, for example, social, political, economic, and of course legal, which both reflect and impact on the organisation’s nature and purpose (Guthrie & Schuermann, 2010; Lunenburg & Ornstein, 2012; Murphy, 2015). Further, some writers (Cummings & Worley, 2014; Pfeffer & Salancik, 1978/2003; Weick, 1976) argue that it is not some objectively-determined environment which is relevant to the focal organisation, but rather a subjectively-perceived environment which the organisation itself enacts, through a process of attention. The system boundary, which delimits an organisation from its external environment, is located where the organisation’s control over activities diminishes and the control of other organisations or individuals begins (Goldring, 1995; Pfeffer & Salancik, 1978/2003).

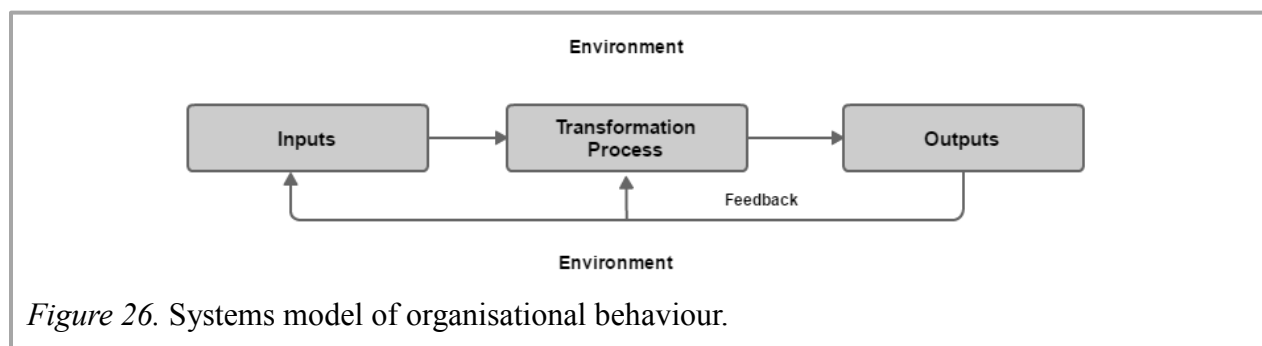
It is at the porous boundaries of open systems that organisations transact with the environment to obtain resources necessary for organisational survival (Aldrich, 1979/2008). Schools seek a range of resources from their external environments, including human, financial, physical, and informational (Ballantine & Spade, 2011; Lunenburg, 2010c; Thurlow, 2005). In return external resource providers can exert influence over the focal organisation (Aldrich, 1979/2008) and encourage it to adapt to changes within the external context.

A further element of the systems perspective that is important to an understanding of school organisations is that of *feedback* (Ashmos & Huber, 1987; Kast & Rosenzweig, 1972; Lunenburg & Ornstein, 2008), a system process that can support the maintenance of a steady organisational state or adaptation to change (Cummings & Worley, 2014). Following the input–transformation–output process, information in relation to the outputs or process is fed back into the system as an input, which in certain cases leads to change within the transformation process and future outputs (Hoy & Miskel, 1989, 2008; Kast & Rosenzweig, 1972). As Lunenburg and Ornstein (2012) have pointed out feedback can be either positive or negative control signals which are evaluated by the leadership against organisational goals. Where performance of the system is satisfactory organisational functioning is not altered (Cyert & March, 1963; Wezel &

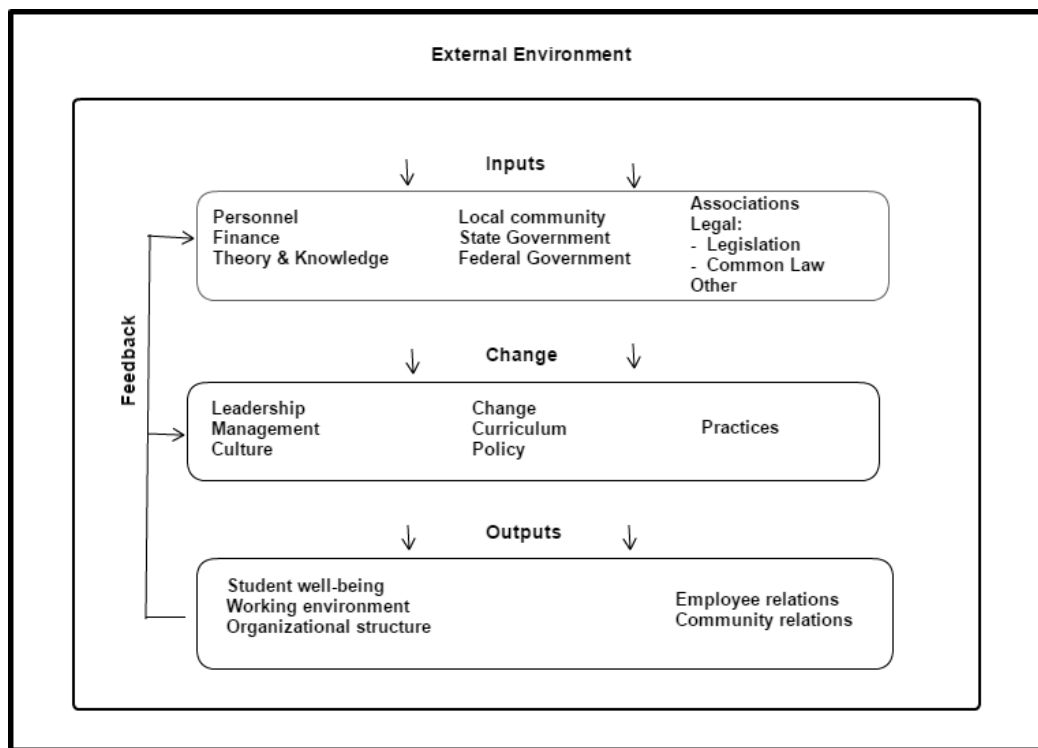
Saka-Helmhout, 2006). Conversely, a deficit between the level of performance and the organisational goals may cause the organisation to adjust and correct the deficiencies in order to attain a new steady state (R. Caldwell, 2012; Kast & Rosenzweig, 1972; Lunenburg & Ornstein, 2008)

### **Schools as open systems.**

Early organisational scholars focused their attention on actors and processes within organisations to explain organisational behaviour (W. Scott, 2004; Sitkin & Bies, 1994). In contrast, open systems theorists (e.g., Martz, 2013) have recognised that the traditional input–transformation–output–feedback process operates within an organisational environment or context as shown in Figure 26. It is now widely accepted (Ballantine & Spade, 2011; Guthrie & Schuermann, 2010; Lunenburg, 2010c) that schools are open systems with permeable boundaries between themselves and their external environments, which allow those environments to influence institutional behaviour (Chubb & Moe, 1988; Thurlow, 2005).



The systems model of organisational behaviour, represented in Figure 26, has attracted considerable academic interest in the four decades since the publication of Katz and Kahn's (1966) seminal work (Aldrich, 1979/2008; Cummings & Worley, 2014; Pfeffer & Salancik, 1978/2003). In particular, the understanding of schools as open systems has been widely discussed (Bush, 2011; Hanson, 1985; Lunenburg & Ornstein, 2012). The model developed by Lunenburg and Ornstein (1991) of the school as an open system is provided in Figure 27.



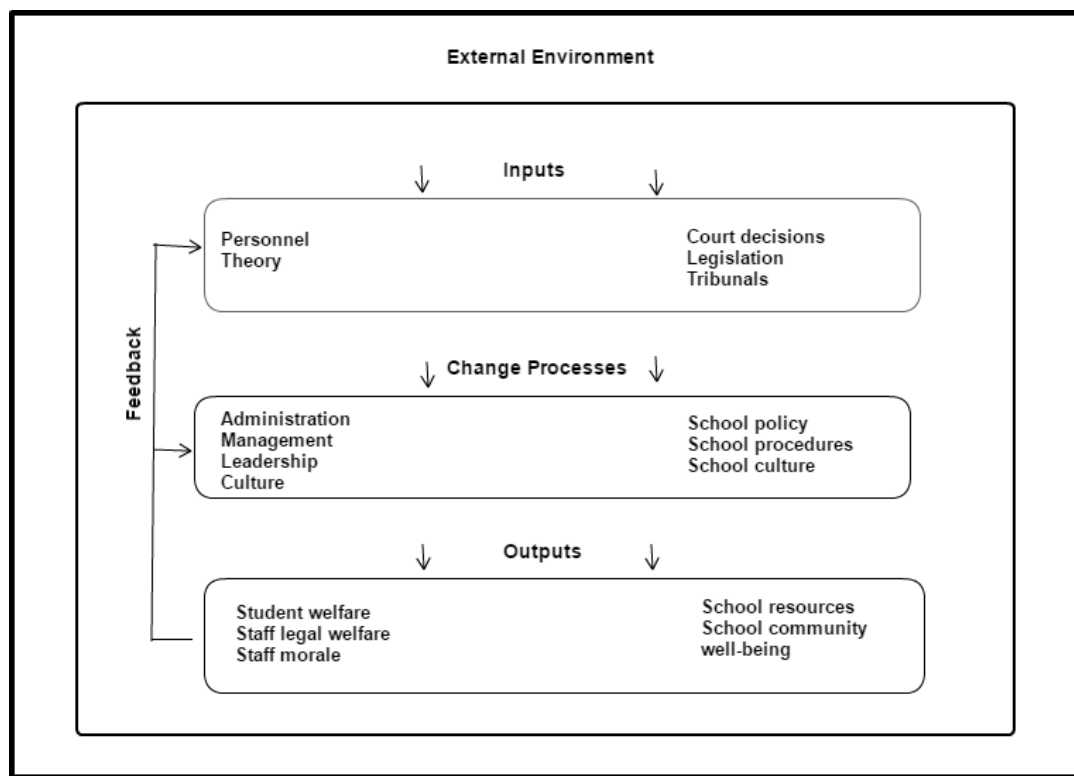
Note: Data from *Educational administration: Concepts and practices*, by F. Lunenburg and A. Ornstein, 1991, p. 20, Belmont, CA, Wadsworth.

Figure 27. Lunenburg and Ornstein's systems view of the school principalship,

Notwithstanding the wider focus on organisational theory and its application to schools, there is a notable absence of Australian literature addressing the legal environment of schools. The exception lies in the work of Stewart (1996b), which is now two decades old. Stewart built on the systems approach presented by Lunenburg and Ornstein (1991) to produce an amended diagram showing the impact of the law on a school system.

#### **Stewart's model of schools and the law.**

The open system model developed by Stewart (1996b; Stewart & McCann, 1999) is set out in Figure 28. It reflects the classical elements of the systems perspective, in which the school organisation receives inputs from the environment, transforms those inputs through a change process, and produces outputs to the external environment. The model also includes a feedback.



Note: Data from *School principals and the law: A study of the legal knowledge needed and held by principals in government schools in Queensland* by D. Stewart, 1996, p. 45, PhD dissertation, Queensland University of Technology, Brisbane, QLD.

Figure 28. Stewart's systems perspective of schools and the law.

mechanism, providing information required by the system to maintain a steady state or to adapt to a changed context (Ballantine & Spade, 2011; Cummings & Worley, 2014; Lunenburg & Ornstein, 2012). Stewart's (1996b) understanding is similar to the model proposed by Lunenburg and Ornstein (1991) in terms of general structure, but brings the legal aspects of school operation into sharper and more contemporary focus through more detailed information, much of which continues to remain relevant to a consideration of the legal environments in which Australian schools and school principals work.

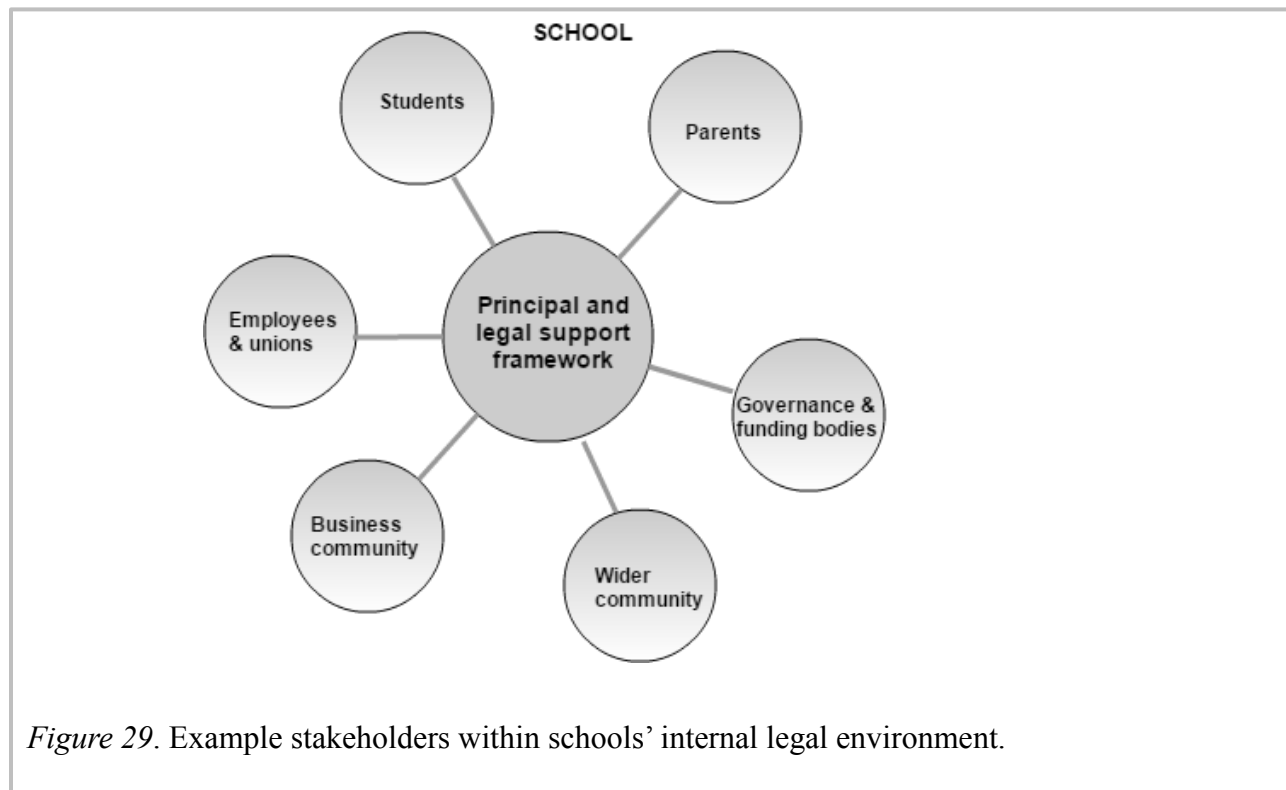
## The Legal Environment of Schools

### Internal legal environment.

Although the Stewart model provides a general institution-level view of the school-law relationship, it does not address the operation or constitution of the school's internal legal environment, although that may to some extent be implied by the organisation's change process.

Recognition of the legal influences within schools may provide a more complete picture of the impact of education law on school principals.

The impact of legal issues generated from within a school by its primary stakeholders (Connolly, Farrell, & James, 2017; Dragona, 2017) may be as important as, or perhaps even more important than, those arising from the external legal environment. When a school is considered to be an open system (and the literature reflects wide agreement that this is the case) then its subsystems, together with its meta-systems, reflect the same input—transformation—output—feedback properties as the focal system (Ashmos & Huber, 1987; Kast & Rosenzweig, 1972). As such, a school's internal legal system might be expected to have inputs of legal information such as legislative requirements, regulatory compliance standards and procedural rules, and legal issues (including complaints, applications, and disputes) to which school policies and procedures are applied. Such legal issues may lead, in some cases, to a decision by the school principal or referral to a superior decision maker. If the school is part of a wider schooling organisation, then it is likely that operations at the systemic level will also reflect the influence of internal and external legal environments.



Who then are the parties constituting a school's internal legal environment? On a general basis<sup>6</sup>, and adopting the categories of stakeholders developed by Fassin (2009; Connolly, et al., 2017; Dragona, 2017; Martz, 2013; Maxwell & Riley, 2017), the primary stakeholders are internal school constituents (such as students, staff and parents), as well as individuals and groups who have a direct interest in the organisation (for example governance and funding bodies, and employee unions), or a contractual, business, or social interest. Figure 29 shows examples of stakeholders who may be relevant to a school's internal legal environment. Of course, any such list will vary to reflect the context of specific schools, (Fassin, 2009) over time. Further, the status of an internal stakeholder as perceived by the school principal may shift to become an external interest in the event that an aggrieved stakeholder seeks recourse to legal remedies located in the school's external legal environment (Pfeffer & Salancik, 1978/2003).

### **External legal environment.**

In Stewart's model of schools and the law (1996b; see also Stewart & McCann, 1999) Stewart acknowledges the existence of the school's external legal environment. His model, however, did not include any reference to the constitution, or operation, of the environment within the systems process, although it may be presumed that the inputs such as personnel, theory, court decisions, legislation and tribunals, are at least partly located in an external legal environment. This silence within the accepted model concerning the external legal relationships of schools allows some scope for exploration of the relationship between schools and their external legal environments.

### ***State and non-State legal environment.***

The Stewart model highlighted different forms of legal information (case law or judicial decisions, legislation or statutes passed by Parliament, and tribunals, perhaps referring to quasi-judicial decisions) as important legal inputs to school organisations, and this remains the case. However, the institutions from which such information issues may not constitute the extent of the school's legal landscape.

Joseph (2015) has commented that, "It is the work governments do in shaping policy direction that provides the environment for educators at all levels to advance teaching and learning" (p.3). Stewart's model explicitly includes court and tribunal decisions, and legislation,

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<sup>6</sup> Participants in the present study provided specific data regarding their perceptions of the issues and personalities relevant to a school's legal environment, which data are reported, in detail, in Chapter 7.



representing two of the branches of Australian government. Much of the literature (Cranston et al., 2003; Cummings & Worley, 2014; Kirkbesoglu, 2011) sees the external legal environment of schools as constituted largely by public institutions: judicial and quasi-judicial decision makers; legislators; and executive policymakers. Activities within this space relate to the formal State governance of schools (Armstrong & Bernstein, 2008). However, some writers (Ballantine & Spade, 2011; Lunenburg & Ornstein, 2012) have opened the door to the possibility of non-State groups also being located in the school's external legal environment.

Just as society is composed of multiple, diverse, and often contradictory institutions both within and without the political process, the argument can be made that the State is not the only influential institution operating in the external legal environment of schools. Several writers (including Armstrong & Bernstein, 2008; Edelman, 1990; Edelman et al., 2010; Levitsky, 2015; Morrill & Chiaretto, 2013) suggest that social movements also play a role in multi-institutional social environments. In particular, Armstrong and Bernstein (2008) have discussed the impact of post-1960s social movements, such as environmental, women's, and lesbian-gay movements, and note that such groups have targeted aspects of civil society like schools to promote cultural change. Although non-State actors may be less visible in terms of education law, social movement theory suggests that they nevertheless perform an invaluable role for schools as a source of meanings about the law (Edelman & Talesh, 2011; Silverman, 1970).

### ***Legal legitimacy.***

An element of a school's external legal environment which was not addressed by the Stewart model was legal legitimacy. In Tasmania, non-government schools are required to be registered under section 144 of the *Education Act 2016*. Government schools are established by the Minister who is also empowered to close them. Through these registration and establishment processes the Minister legitimises the operation, indeed the legal existence (Guthrie & Schuermann, 2010), of Tasmanian schools.

A definition of legitimacy often cited in organisational literature is proposed by Suchman (1995), "A generalised perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions." (p.574) From a resource dependency perspective (Pfeffer & Salancik, 1978/2003), a school transacts with its external legal environment in order to obtain approval for its operation. The cost of such approval is compliance with legal and social norms (Zimmerman &

Zeitz, 2002). This formal, State-approved, legitimacy confers legal status on the school, staff, and students, enables access to certain government-controlled resources (Drori & Honig, 2013), and legitimises the exercise of certain powers most especially by the school principal. But importantly, this approval does not automatically confer social legitimacy in the eyes of internal stakeholders including parents and the wider community. Social legitimacy, which depends on how favourably or otherwise an organisation is viewed by its constituency (Rindova, Pollock, & Hayward, 2006; Suchman, 1995), involves questions of reputation and standing of a school. These issues may be critically influenced by judgements made within the school's external legal environment, by elements such as the media (Boston, 2009; Lingard & Sellar, 2013), the judicial system (Bitektine & Haack, 2015), and interest groups, which create important links between the external and internal environments.

### ***Change agents.***

Returning again to the systems theory of organisations, the literature confirms that systems tend toward a steady state (Ashmos & Huber, 1987; Kast & Rosenzweig, 1972). When change occurs in the environment the organisation responds to re-establish a condition of alignment (Cummings & Worley, 2014; Kirkbesoglu, 2011). As Lunenburg (2010c) has observed, "The educational environment is constantly changing and the school organisation must adapt to these forces in order to remain relevant and effective." (p. 1).

The *forces* referred to by Lunenburg (2010) generally fall into two categories: exogenous shocks that destabilise the dominant practices in an organisational field; and incremental endogenous shifts in which change is diffused over time (Edelman et al., 2010; Griffiths, 2015; Murphy, 2015). The latter change process occurs through, "gradual changes of consciousness, which in turn produce new systems of meaning, rituals and practices ... without direct mobilisation and in a nearly imperceptible manner" (Edelman et al., 2010, p. 672). Exogenous shocks, however, produce a clear rupture in dominant ways of thinking, described by Yamak, Nielsen and Escribà-Esteve (2014) as, "transformational events, environmental jolts and discontinuities" (p. 73) .

### ***Open systems.***

A further important aspect of systems theory which applies to both the internal and external legal environments of schools is the school's capacity, not only to be influenced by environmental forces, but also to exert influence in return. Contemporary schools and their leaders, "exist

within a maze of legal and political expectations” (Ballantine & Spade, 2011, p. xv) and are shaped and influenced as a consequence of the regulatory environment within which they operate (Aldrich & Pfeffer, 1976; Kirkbesoglu, 2011). This perspective appears to underlie the Stewart model of schools and the law. Recent organisation theorists, however, have questioned whether organisations are simply passive recipients of environmental influence as earlier understandings suggest and argue that organisations may actively manipulate and control their environments in accordance with their own interests (Aldrich, 1979/2008; Bush, 2011; W. Scott, 2013). A useful example of the capacity of schools and their leaders to influence their external legal environment was the Tasmanian Government’s review of existing legislation prior to the 2016 Act being introduced (Minister for Education and Training, 2014). Many principals, schools, and professional educator organisations made submissions on the Discussion Paper, and thereby influenced the shape of the final legislative reforms (Department of Education (Tasmania), 2017). Similarly, a coalition of Northern Tasmanian principals from all three sectors endorsed an open letter supporting the proposed UTAS relocation into the City of Launceston, as a way to influence the future employment environment for their students (Aquilina, 2016).

### ***Model of legal environment***

In light of the existing scholarship concerning the internal and external environments of schools, an interim, working model is proposed at Figure 30. It incorporates both the internal and external legal contexts of Tasmanian schools and school systems, acknowledges the two-way patterns of influence between the school and its external environment, and reflects the possible influence on schools from both State and non-State actors. On the formal, governmental side, the framework incorporates outputs from the legislature and the judiciary, as well as the executive action that legitimates school operation. This model is as yet incomplete; further detail will be added based on the study findings, to produce a more complete “environmental map” (Goldring, 1995, p. 287) of Tasmanian schools’ legal environments.

## **Chapter 3 Overview and Chapter 4**

This chapter has presented a conceptual framework within which the impact of education law on Tasmanian school and school principals can be considered. That framework has combined concepts and empirical research drawn from both systems and organisation theory to produce a view of the school as an open system, with both internal and external legal environments both of which are fundamental to the school’s legal legitimacy, operation, and change. These

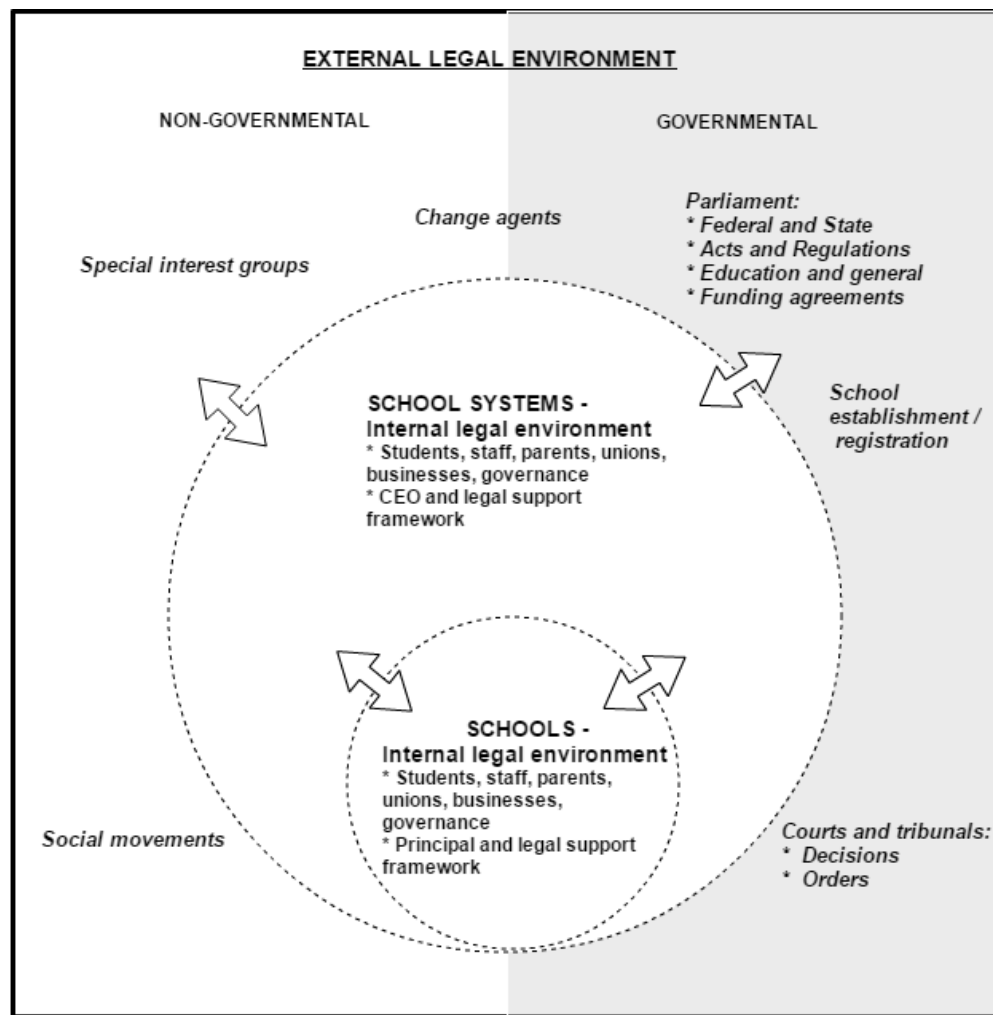


Figure 30. An interim working model, of the legal environments of schools.

understandings regarding the internal and external legal environments of schools, as discussed in this chapter and represented in Figure 30, have provided a conceptual framework within which the study methodology was designed, the data were analysed and understood, and the literature and findings from the study were synthesised to produce its key learnings. The following chapter sets out the methods applied in the study in order to answer its research questions. It outlines the philosophical and methodological basis of the inquiry (based on a paradigm of Deweyan Pragmatism), its mixed methods design, and the use of both quantitative and qualitative techniques, with some consideration of the incommensurability issue.

## **Chapter 4**

### **Research Methods**

The purpose of this study was to explore the impact of education law on Tasmanian school principals. To answer the research questions developed for this purpose, a mixed methods, concurrent design was adopted in which quantitative and qualitative data were collected and analysed separately. Although the data findings were formally mixed in the final stage of drawing meta-inferences, the constant comparison approach allowed emergent findings to influence subsequent data collection.

This chapter is presented in two, inter-related parts. The first part addresses the philosophical basis on which the study is based. In particular it discusses the research paradigm, the incommensurability issue, classical Pragmatism as an alternate “paradigmatic foundation” (Tashakkori & Teddlie, 2003, p. 4), mixed methodology, and the mixing of research methods. Those matters provide the foundation for the second part, concerning the study’s mixed methods research design, research methods, data, quality, and ethics.

### **Part 1 — Philosophy of Inquiry**

Mixed methods research literature suggests strongly that researchers need to explicitly acknowledge the philosophical underpinnings of their work (Giddings, 2006; Mertens, 2010; Shannon-Baker, 2016) to provide a credible rationale for their methodological choices (Biddle & Schafft, 2015; Bryman, Becker, & Sempik, 2008; Cresswell & Plano Clark, 2011). Accordingly, this part introduces the notion of research paradigms, the challenges of mixing paradigms in mixed methods research, and the opportunities offered to mixed methodology by the Pragmatic approach.

### **Paradigms**

The term *paradigm*, originally came to prominence in the philosophy of science through Kuhn’s (1962) seminal work in which he linked the notion of paradigm—an “accepted model or pattern” (p. 23)—to shifts in thinking about knowledge, in which one view is replaced by another view that is incommensurable with the one before (Donmoyer, 2006; J. Shaw et al., 2010; Wiggins, 2011). That understanding was adopted in the social sciences during the 1970s and 1980s to make sense of the “methodological revolution” (Donmoyer, 2006, p. 11) attendant on the rise of

constructivist and interpretivist research (Greene & Hall, 2010; Shannon-Baker, 2016; Wiggins, 2011; c.f. Beista 2010; Rallis & Rossman, 2012).

Although the term ‘paradigm’ is now widely used in social research, both its meaning and application remain contested (Biddle & Schafft, 2015; Harrits, 2011; Teddlie & Tashakkori, 2010). In the present study, a research paradigm is understood at the highest level of abstraction: as a philosophical worldview; an, “all-encompassing way of experiencing and thinking about the world” (Morgan, 2007, p. 50) which influences how researchers select both the questions they study and the methods of inquiry to do so (L. Doyle, Brady, & Byrne, 2016). The literature abounds with explanations of what constitutes a research worldview. For example, Ruwhiu and Cone (2010) consider it a, “set of interrelated assumptions about the social world, which provide a philosophical, and conceptual framework for the organised study of that world.” (p. 108) A common thread that has emerged is that a research paradigm embodies a set of beliefs or assumptions which serve to guide a researcher’s inquiry.

The philosophical dimensions held to characterise a paradigm include its epistemology, ontology, axiology, and methodology (Crotty, 1998; Grix, 2010; Morgan, 2014a; c.f. Beista, 2010). *Epistemology* concerns knowledge of the world (Mingers & Brocklesby, 1997). As Grant and Giddings (2002) explain, it “defines the nature of the relationship between the inquirer and the known, what counts as knowledge, and on what basis we can make knowledge claims” (p. 12). *Ontology*, a closely related concept, is the study of being (Bechara & Van de Ven, 2007; Crotty, 1998). It deals with the nature of existence, self, and the structure of reality (Rallis & Rossman, 2012), and asks what is, independently of whether or not it is known (Hartas, 2010; Hesse-Biber & Leavy, 2011). *Axiology* concerns the nature of ethics and values (Biddle & Schafft, 2015; Morgan, 2007). The fourth of the philosophical foundations is *methodology*, the theoretical assumptions and principles that underpin a particular research approach and guide how research should proceed (Crotty, 1998; Giddings & Grant, 2002; Mertens, 2010). Within the literature writers go to considerable lengths to differentiate *methodology* from *method* (e.g., Bryman, 1984; Lipscomb, 2008; Wiggins, 2011). A useful explanation of the relationship between the terms is offered by Grix (2002), who notes that methodology is concerned with the logic of inquiry, “in particular with investigating the potentialities and limitations of particular techniques or procedures” (p. 179), whereas methods are techniques or procedures used to collect and analyse data (Hartas, 2010; Teddlie & Tashakkori, 2010).

### **Incommensurability**

Questions about the mixing of methods in social research are often traced back to the late 20th century *paradigm wars* (Gage, 1989; Given, 2017; Tashakkori & Teddlie, 1998) which witnessed a growing division between researchers aligned with the philosophical commitments of positivism (and subsequently post-positivism), and the adherents of the naturalistic, later termed the constructivist, approach advocated by Guba and Lincoln (Guba, 1990; Guba & Lincoln, 1994). It became clear, on philosophical grounds, that the positivist and constructivist paradigms were incommensurable, and logically incompatible (Donmoyer, 2006). This paradigmatic distinction between approaches to monomethod research became increasingly inflamed in relation to mixed methods research which mixed quantitative, empirical methods associated with the positivist approach, with qualitative, interpretivist methods from the constructivist paradigm (Biddle & Schafft, 2015; Morgan, 2007; Symonds & Gorard, 2008). Debate over the relationship between paradigms and methodology was intense (Armitage & Campus, 2007; Tashakkori & Teddlie, 2003) and is not entirely settled today (Christ, 2013; Evans, Coon, & Ume, 2011; Given, 2017). In the present study the researcher acknowledged the incommensurability issue in mixing paradigms based in positivism and constructivism, but rather chose to adopt the alternative Pragmatic paradigm to provide the philosophical foundations for the research, with mixed methods as the research methodology.

### **Pragmatism**

Pragmatism, a diverse philosophical movement that arose in the United States at the close of the nineteenth century, has been widely proposed as an appropriate philosophical foundation for mixed methods research, although some writers remain unconvinced (Christ, 2013; Giddings & Grant, 2007; Lipscomb, 2008). In this study the researcher adopted a form of classical American Pragmatism (Pragmatism), largely based on the writings of the educational philosopher John Dewey (Christ, 2013; Crotty, 1998; Hammond, 2013). Before addressing the philosophical assumptions that constitute this form of Pragmatism, a note of caution should be sounded. This philosophical Pragmatism is not the pragmatism of everyday description. It should not be equated with a practical or expedient approach (Bishop, 2015; Denscombe, 2008; Feilzer, 2010).

Lincoln (2010) has pointed out it is not sufficient to simply claim Pragmatism as one's paradigm. Assumptions of the worldview need to be made transparent. The following discussion sets out the philosophical basis of the Pragmatic approach applied in this study in terms of

ontology, epistemology, axiology, and methodology, although in Pragmatic thought much of these ideas are overlapping or conflated (Hothersall, 2016; Morgan, 2007; Pratt, 2016; c.f. Rorty, 1991 who argued that Pragmatic thought supports neither epistemology nor ontology).

### **Ontology.**

Dewey's conception of reality importantly moved away from the traditional dualism of objectivity and subjectivity (Bishop, 2015; J. Hall, 2013; Maxcy, 2003). Rather, he suggested a form of realism based on, "an external world independent of the mind, as well as that lodged in the mind" (Cresswell, 2008, p. 11). This has been described as interplay of *a priori* and the socially mediated (Hothersall, 2016). Dewey's transactional realism<sup>7</sup> acknowledged that every individual's unique, *subjective* transactions with the *objective* environment informed by their past experiences created that person's own individualistic world. An *intersubjective* world arose through social practice (Beista & Burbules, 2003; Dewey, 1911; B. Johnson & Christensen, 2011). All aspects of this "real world" (Feilzer, 2010, p. 8) are open to empirical inquiry (Dewey, 1925; Cresswell & Plano Clark, 2007; Morgan, 2007).

### **Epistemology.**

As Martela (2015; see also Beista & Burbules, 2003; Morgan, 2007, 2014a) suggests, the epistemological starting point in Pragmatism was that experience is primary, and only through a particular type of experience—controlled reflective inquiry—could knowledge be created (Talisie & Aikin, 2008; Webb, 2007). Dewey wrote in *Logic, the Theory of Inquiry* (1938), "Knowledge is related to inquiry as a product to the operations by which it is produced" (p. 122). The aim of inquiry was not discovery of antecedent facts, but rather bringing into being of a new object of knowledge which did not previously exist (Hogan, 2009; Morgan, 2014b; Talisie & Aikin, 2008).

Dewey's focus on inquiry and experience resulted in a view of knowledge as empirical, rather than based on first principles (Pratt, 2016; P. Scott & Briggs, 2009; Talisie & Aikin, 2008). In contrast to the fixed, stable, *a priori*, and permanent Cartesian belief relied on by foundationalists (M. Bacon, 2012; Rockmore, 2005; P. Scott & Briggs, 2009), Pragmatism did

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<sup>7</sup> Dewey's views on inquiry are comprehensively discussed in Talisie and Aiken (2008).



not offer absolute truths but, instead, recognised ideas with, “warranted assertability” (Dewey, 1938, p. 15). Warranted ideas were both contextual (Cherryholmes, 1992; Martela, 2015; Rockmore, 2005) and provisional (Dieleman, 2017; Hookway, 2010; R. Morrison, 2016). Neither did Pragmatism measure the truth of an idea or theory by *correspondence* to an absolute reality (Baert, 2005; de Waal, 2005; Hammond, 2013) but instead invoked an *instrumentalist* view that related truth to future action. As Morgan observed, “Pragmatism . . . concentrates instead on whether the knowledge is *useful* (i.e., whether it can be used to guide behaviour that produces anticipated outcomes).” (p. 40)

### **Axiology.**

Pragmatic axiology, which addresses the role of values in the conduct of Pragmatic research (Christ, 2013), is not the subject of a great deal of scholarly discussion (Biddle & Schafft, 2015) despite its relevance to the conduct of social science research. Morgan (2007) has, however, pointed out that the founders of Pragmatism were:

Aware of how their values shaped their research goals, and they each used their writings to further their preferred political agendas... A Pragmatic approach reminds us that our values and our politics are always part of who we are and how we act. (p. 70)

Writers in the Pragmatic tradition (Giddings, 2006; Hesse-Biber, 2010) argue strongly that researcher reflexivity should be examined throughout the inquiry process, particularly in relation to the selection and formation of research questions (Biddle & Schafft, 2015; Martela, 2015; Tashakkori & Teddlie, 1998).

### **Methodology.**

As a philosophical paradigm, Pragmatism assists social science researchers concerning the inquiry methodology. This is especially the case regarding the types of research problems to be addressed and the role of the research community in directing inquiry, techniques suitable for conducting research, the drawing of inferences from experiences, and the transferability of warranted assertions. These issues are influenced by Dewey’s desire to overcome traditional (and he considered unhelpful) philosophical dualisms (L. Doyle et al., 2016; B. Johnson & Onwuegbuzie, 2004; Maxcy, 2003) between mind and matter (Beista & Burbules, 2003), objectivism and subjectivism (Bechara & Van de Ven, 2007; Heyvaert, Hannes, Maes, &

Onghena, 2013; Morgan, 2014b), and etic and emic standpoints (Christ, 2013; Hogan, 2009; Onwuegbuzie, Johnson, & Collins, 2009).

### ***Practical problems.***

In foregrounding experience as the basis of inquiry Dewey focused on solving immediate and practical real world problems which were directly part of ordinary experience (Buch & Elkjaer, 2015; J. Marshall, 1985; Maxcy, 2003):

Scientific subject-matter and procedures grow out of the direct problems and methods of common sense . . . Any problem of scientific inquiry that does not grow out of actual (or practical) social conditions is factitious. (Dewey, 1938, pp. 66, 499)

### ***Community of inquiry.***

Importantly, Pragmatic inquiry takes place within a collective context. It is “socially conditioned” (Dewey, 1938, p. 19). The *community of inquiry* that forms around an indeterminate situation shares a consensus about questions worth asking, methods most appropriate to answering them, and the bases on which assertions may be warranted (Martela, 2015; Morgan, 2007, 2014a; Shields, 2003), thereby indirectly shaping every aspect of the inquiry process.

### ***Methods.***

The literature contains a wealth of references linking Pragmatism with methodological pluralism (Christ, 2013; Cresswell, 2008; Gole & Hirschheim, 2000; B. Johnson et al., 2007; Onwuegbuzie & Johnson, 2006). However, based on Dewey’s philosophical approach the situation was not as straightforward as simply overcoming incommensurability and mixing methods. Hall (2013) has noted, “Although Dewey’s pragmatic perspective does not offer a prescriptive mixed methods approach or design per se, it does offer a description about how methods are to be considered.” (p. 19) Reliance on any inquiry method was to be evaluated in terms of the basic Pragmatic question: What difference would it make to do things one way, rather than another? Or, more specifically, what difference would it make to address the research question by collecting and analysing the data in this way, rather than another way? (Dewey, 1938; Morgan, 2014a, 2014b) As such, Pragmatism, “does not require a particular method or methods mix” (Feilzer, 2010, p. 13; J. Marshall, 1985; Pearce, 2012) but rather allows for the use of a method or methods best suited to resolving the problematical situation (L. Doyle et al., 2016; Heyvaert et al., 2013; Small, 2011).

***Abduction.***

The process of linking theory and data in Pragmatic inquiry involved the concept of *abduction* originally developed by Dewey's fellow Pragmatist, Charles Pearce (Bechara & Van de Ven, 2007; de Waal, 2005; Hookway, 2010). Typically, qualitative inquiry adopts an inductive approach, moving upwards from specific cases and observations to transferable theory, whereas quantitative inquiry tends to be deductive going from theory to hypothesis-testing with representative cases (Pearce, 2012; Tashakkori & Teddlie, 1998). Abductive reasoning, however, relates more closely to real-life inquiry, where several moves are made back and forth between theory and data (Alavi & Habek, 2016; Morgan, 2014a; Shannon-Baker, 2016).

***Transferability of inferences.***

A further dualism within the literature contrasts inferences that can be generalised to a population as a whole, and those limited to the precise context of the study (Morgan, 2014a; Pearce, 2012). Pragmatists consider that inferences can be both contextual, and generalisable, by analysing them for transferability to other situations and providing the evidence, or warrant, for such transfer (Evans et al., 2011; Shannon-Baker, 2016).

**Mixed Methods Methodology**

The discussion now takes a step down from the philosophical assumptions of Pragmatism, to examine the methodology of the present study. A *research methodology* has been defined as a general approach to inquiry that guides the selection of specific methods (Teddlie & Tashakkori, 2010; Cameron, 2011; Mingers & Brockleby, 1997). In this way the methodology acts as a bridge between the study's philosophical standpoint and its methods (Cresswell, 2014; J. Hall, 2013; Hesse-Biber & Leavy, 2011).

The research methodology adopted for this study was *mixed methods*, the "third methodological movement" (Cameron, 2011, p. 96) beside quantitative and qualitative methodologies (Evans et al., 2011; B. Johnson et al., 2007; c.f. Giddings & Grant, 2007). Mixed methods research has been the subject of a host of different definitions. B. Johnson and colleagues (2007) provided a useful synthesised understanding (cited more than 3000 times), from 17 mixed methods scholars:

Mixed methods research is the type of research in which a researcher . . . combines elements of qualitative and quantitative research approaches (e.g., the use of qualitative

and quantitative viewpoints, data collection, analysis, inference techniques) for the purpose of breadth and depth of understanding and corroboration. (p. 123)

As a research methodology, mixed methods has often been identified with several generally agreed-on inquiry characteristics. The summarised list suggested by Creswell and Plano Clark (2011; Creswell, 2015; Teddlie & Tashakkori, 2010) includes the following aspects:

- using data collection and analysis methods appropriate to the research question;
- sequencing data collection and analysis concurrently or sequentially
- mixing or integrating two forms of data;
- giving priority to one, or both, forms of data;
- using the procedures in a single study or multiple phases of a program of studies;
- framing the procedures within a philosophical worldview; and
- combining procedures into a specific research design that directs the conduct of the study.

A further characteristic proposed by Tashakkori and Teddlie (2010; see also Ivankova, 2014; Morse & Niehaus, 2009) is reliance on visual representations and a common notation system.

## Research Methods

Crotty (1998) defined *research methods* as, “Techniques and procedures used to gather and analyse data related to some research question or hypothesis” (p. 3). Two aspects are particularly important: the relationship between the methods and the research questions; and whether at this more concrete and practical level (Giddings & Grant, 2007) such methods can be mixed. There is substantial agreement in the literature that research questions guide the choice of research methods (Beista, 2010; Gibson, 2017; Greene, 2008; Morgan, 2014a). Hartas (2010) has observed:

A fit between the method and the purpose and circumstances of research is crucial. As a general rule we should start from the questions we seek to answer, and then develop the methodological frameworks to inform our choice of methods. In this way we start from the inquiry, not the method. (p. 18)

Research methods are commonly described as quantitative (number-based, such as surveys) or qualitative (word-based, such as interviews) which terms have in the past been associated with the positivist and interpretivist worldviews. It is recognised that a firm linkage has sometimes been drawn between those research paradigms and methods of data collection and analysis (J.

Hall, 2013; Hartas, 2010; Tashakkori & Cresswell, 2007). Nonetheless, strong arguments have also been made that neither types of data nor analytical techniques are necessarily paradigmatic (Greene, Caracelli, & Graham, 1989; Mingers, 2001; Symonds & Gorard, 2008). For the purposes of the present study, the researcher accepted that research methods are a-paradigmatic (Giddings & Grant, 2002; Sarantakos, 2005) and that mixing is not therefore logically precluded.

These matters were all relevant to framing the present research as a mixed methods study. The following part describes the specific research design of the study. It is followed by a detailed rationale for the use of a mixed methodology.

## Part 2 — Research Design

### Design of the Study

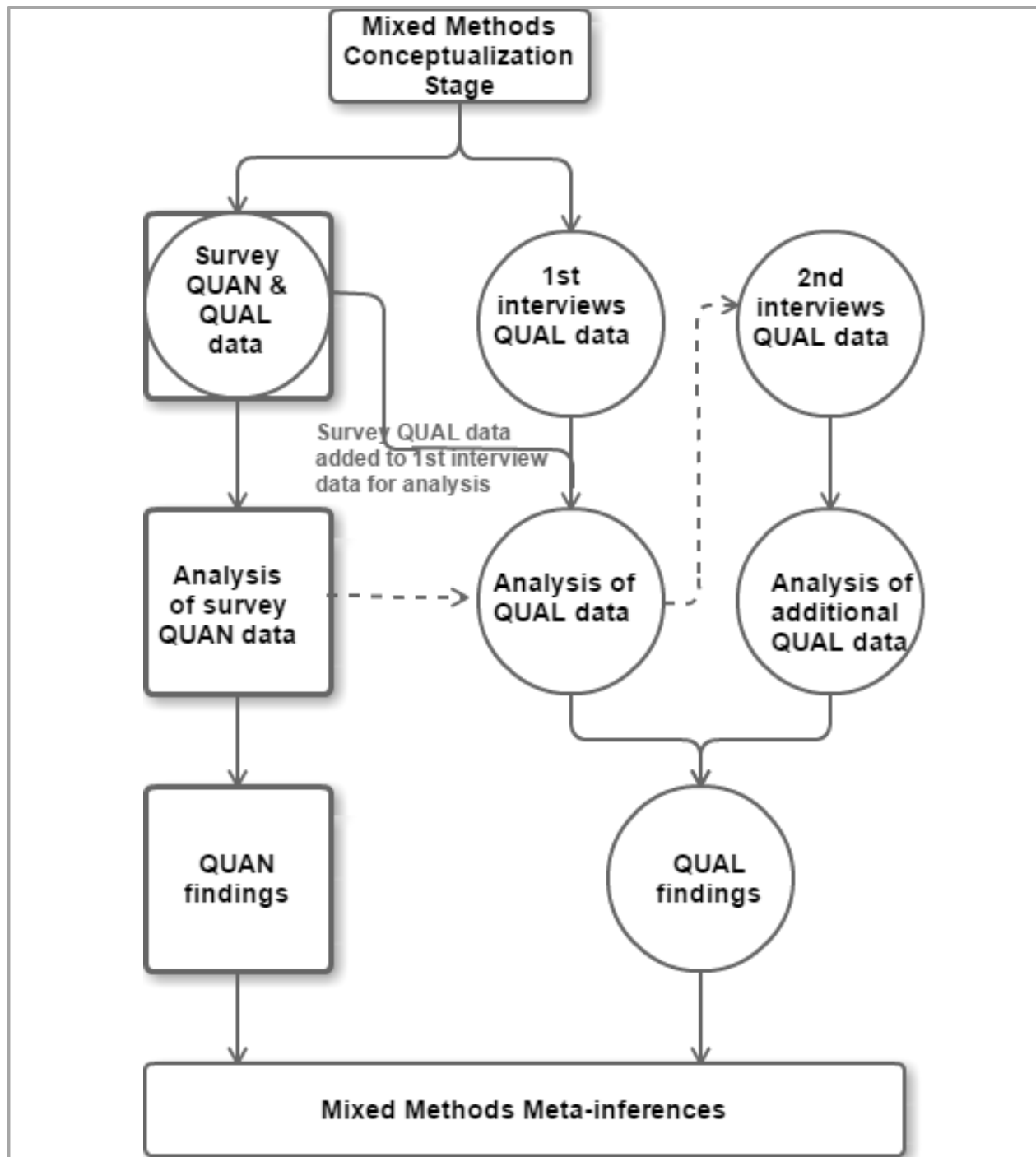
In light of the quantitative, qualitative, and mixed nature of the research questions posed for the study (shown in Table 9), the research was designed as a mixed methods inquiry.

Table 9

*Nature of research questions*

Research Questions	Quantitative	Qualitative	Mixed Meta-Inferences
RQ 1. Legal literacy	✓	✓	✓
RQ 2. Legal consciousness		✓	
RQ3. Legal context		✓	
RQ 4. Legal costs	✓	✓	✓
RQ 5. Suggested improvements	✓	✓	✓

A detailed representation of the research design is set out in Figure 31. Using the design notation developed by Morse (1991), the study is a quan + QUAL research project. The study consisted of two phases: quantitative data collection and analysis; and qualitative data collection and analysis. The former involved open-ended responses to survey questions, whereas the latter included open-ended survey responses, interview transcripts and newspaper reports. The initial research design specified that both phases would be accorded equal priority. That balance was modified during the course of the study to give greater emphasis to the qualitative element.



Note: Design adapted from "A sequential mixed model research design: Design, analytical and display issues" by R. Cameron, 2009, *International Journal of Multiple Research Approaches*, 3(2), p. 147.

Figure 31. Partially mixed, convergent parallel mixed methods research design.

For the most part, the two phases were conducted independently and close in time, although the emergent findings based on early data collection did influence later data collection, as explained below. Findings were developed separately for each phase and where appropriate, those findings were integrated to produce mixed “meta-inferences” (Tashakkori & Teddlie, 1998, p. 686).

The initial plan for the study reflected a standard *concurrent triangulation* design, described by Creswell, Plano Clark, Guttman and Hansen (2003; Alavi & Habek, 2016; Creswell & Plano Clark, 2007; Tashakkori & Teddlie, 1998). However, circumstances intervened to create a temporal divide in the qualitative data collection that resulted in a refocusing of the interviews in light of issues that emerged in the survey findings and the first stage interviews. The mixed methods design proved sufficiently flexible to accommodate this change. As Molina-Azorin and colleagues (2017) have observed:

A mixed methods research study may have a pre-determined research design, but new components of the design may evolve as researchers follow up on leads that develop as data are collected and analysed. These opportunistic designs may be different from those contained in previously published typologies. (p. 186)

### **Rationale for Design**

Throughout the literature (e.g., K. Collins, Onwuegbuzie, & Sutton, 2006; Creswell & Plano Clark, 2011; Molina-Azorin et al., 2017) it is argued that the decision to adopt a mixed methods design demands that mixed methods offer more to the research than would the use of a quantitative or qualitative design alone. As advocated by Bryman and colleagues (2007; 2008), the following rationale is offered for the mixed methods design in the present study. It is based on B. Johnson and Turner’s (2003) *fundamental principle* that, “methods should be mixed in a way that has complementary strengths and non-overlapping weaknesses” (p. 299). In addition, the rationale acknowledges the purposes for mixing methods identified by Greene et al. (1989; Bryman, 2006; L. Doyle et al., 2016; Molina-Azorin & Cameron, 2010), which are triangulation, complementarity, development, initiation, and expansion.

Inquiry methods are recognised as subject to particular weaknesses, while offering specific strengths (McKim, 2015; Molina-Azorin et al., 2017; Wiggins, 2011). Some scholars consider that the combination of multiple methods in a mixed methods study can compensate for the weaknesses of an individual method by capitalising on the other’s complementary strengths (Brewer & Hunter, 1989; B. Johnson & Onwuegbuzie, 2004; Ostlund, Kidd, Wengstrom, &

Rowa-Dewar, 2011). The potential to exploit quantitative and qualitative assets and neutralise their liabilities (Newlyn, 2006; Stewart, 1996b) was a factor in the researcher adopting a mixed methods, rather than a single method, approach for this study.

The weaknesses of the quantitative methods used in the research involved a lack of individual participant voice, failure to address the context or setting of the data, as well as a refusal to recognise the impact of the researcher and her values on the research process. Those aspects were counterbalanced by the strengths of the qualitative methods which examined the views of individual participants in depth, involved detailed local information and acknowledged the role of the researcher as central to the research process. The qualitative phase of the study was also subject to shortcomings, including a lack of objectivity and incapacity to generalise the research findings. By contrast, the quantitative phase had a capacity to generalise findings to a population of non-participants and following the tenets of positivism removed the researcher's influence from the process.

The first of the five justifications for mixed methods cited by Greene, Caracelli and Graham (1989) was *triangulation*, “the combination of methodologies in the study of the same phenomenon” (Denzin, 1978, p. 291). The classic conception of mixed methods triangulation (Hammersley, 2008; Molina-Azorin et al., 2017; Small, 2011) sought to increase the construct validity of data, through the convergence and corroboration of results derived from different research methods. That understanding did not apply in the present case. Rather, the researcher adopted both *methodological triangulation* (using multiple methods to examine the research problem), as well as *data triangulation* (collecting data from both inside and outside the subject of the research) (Denzin, 1978; Gibson, 2017; B. Johnson et al., 2007) to produce a more rounded, accurate, and warranted account of the subjects studied (Giles, 2006; Goerres & Prinzen, 2012). Turner et al. (2017), have called this process *holistic triangulation*, arguing that the unique capacity of different research methods to see particular aspects of a phenomenon contributes to a more complete understanding of the subject. It is this form of triangulation that was sought in the present study, through use of the quantitative survey to create a broad picture of the surface landscape of education law in Tasmanian schools, and the qualitative inquiry to drill deep holes required for in-depth investigation of the school principals' legal experiences, to borrow Kelle's metaphor (2006).



The remaining reasons proposed by Greene and her colleagues (1989) for mixing methods are closely linked with these justifications. *Complementarity*, “seeks elaboration, enhancement, illustration, clarification of the results from one method with the results from another” (Greene et al., 1989, p. 259). As Rossman and Wilson (1985) have explained, qualitative methods are often incorporated in a study to, “put meat on the bones” (p. 321) of quantitative findings. In the present study the qualitative interviews were initially intended to elaborate and illustrate the quantitative survey results. The original, basic concurrent design adopted for the study did not envisage the results of one method being used to develop or inform the other, as in Greene and colleagues’ (1989) *development* rationale. When the research plan was revised in light of the survey and early interview results, however, the development rationale became relevant (Almalki, 2016; Caracelli & Greene, 1993; Salehi & Golafshani, 2010). The remaining two heads of justification—initiation and expansion—did not apply to this study.

The use of quantitative and qualitative methods in this study enabled the researcher to better inquire into the objective, subjective and intersubjective realities faced by Tasmanian school principals dealing with legal matters consistent with the study’s Pragmatic philosophy of research. The mixed methods approach contributed to the researcher producing an account which was more complete than would have been the case if only a single method had been used. Further, it proved sufficiently flexible to support a revision of the research plan to take advantage of unexpected circumstances and emergent results.

## Research Methods

### Timeline for conduct of study.

A general timeline for the conduct of this study is set out in Table 10.

Table 10

#### *Research Timeline*

Dates	Approvals	Data collection	Data management	Data analysis
May 2012	Commenced candidature; prepared Ethics application.	Prepared on-line survey for national study.		
May 2013	Ethics application			

<b>Dates</b>	<b>Approvals</b>	<b>Data collection</b>	<b>Data management</b>	<b>Data analysis</b>
	approved			
Jun–Sep 2013		Survey data collection through national hosting body unsuccessful.		
Nov 2013		Arrangement with alternate national body to host survey.		
Dec 2013	Ethics amendment approved.			
Nov 2013–Feb 2014		Revised all documents for national survey.		
Feb 2014		Professional differences with alternate hosting body. Withdrew survey.		
Feb–Mar 2014	Ethics amendment approved. TCEO approval for research in Catholic schools	Refocused scope of study to State-based. Documents fully revised.		
Apr 2014	DoE approval for research in government schools			
May–Oct 2014		On-line survey open		Quan analysis commenced
Jun 2014		Commenced interviews.	Interviews transcribed, member checked, & coded.	Qual analysis commenced.
Jun 2014–May 2015	Research suspended			
Jun 2015–Feb 2016		Interviews recommenced, with focus on emergent themes.	Interviews transcribed, member checked, & coded	Quan analysis completed.
Mar 2016				Qual analysis completed.

Preparatory work for a national study commenced in 2012. During 2013 and 2014, the researcher worked with two different national education leadership bodies, but was unsuccessful in collecting sufficient survey data. The scope of the study was then revised to examine the impact of education law matters on Tasmanian school principals across the three schooling sectors. The on-line survey was launched in May 2014 and was accessible to Tasmanian school principals for a six month period. Qualitative data collection for the study commenced in June 2014, and nine interviews were conducted before the study was suspended for 12 months. On recommencement of the study, the researcher conducted a broad, initial analysis of the survey data, together with the data from the first stage interviews. This analysis indicated that the research was generally confirming the findings from earlier Australian studies (McCann, 2006; Stewart, 1996b). However, that analysis also highlighted emergent issues about the legal environments facing school principals, their beliefs about the law, and the adequacy of legal support available to them. It was decided that these matters would be followed up in the remaining interviews.

### **Researcher reflexivity.**

Researcher reflexivity in mixed-methods research is considered an aid to authentic representation (Fossey, Harvey, McDermott, & Davidson, 2002). The construct of reflexivity is closely bound to an awareness of researcher subjectivity, and a rejection of scientific model claims that good research is objective and unbiased (Mason, 2002). As explained by Kitto et al. (2008):

Reflexivity is where researchers openly acknowledge and address the influence that the relationship among the researchers, the research topic and subjects may have on the research. Fundamentally, reflexivity requires a demonstration by the researchers that they are aware of the sociocultural position that they inhabit and how their value systems might affect the selection of the research problem, research design, collection and analysis of the data. It also refers to an awareness by the researchers of the social setting of the research and the wider social context in which it is placed. (p. 245)

The researcher's reflexivity statement is set out in Figure 32.

I am a Caucasian Australian woman of British extraction, of mature years. My early professional background involved practice as a government legal officer for both the Commonwealth, and the State of Tasmania. More recently I requalified as a primary school teacher, through UTAS. During my preparation as a preservice teacher, I was provided with information concerning a teacher's legal duty of care, and teacher conduct that was prohibited by law. This advice represented good practice and was given in good faith, but was legally inaccurate. That experience caused me to question the quality of legal knowledge in place in Tasmanian schools and provided, in part, my motivation to study education law and its impact on Tasmanian school principals. Further impetus for the present study arose from my cross-disciplinary professional qualifications in both education and the law.

During this study I collected both the quantitative and qualitative data in person. This had little impact on the survey data collected from anonymous school principals. During the interview phase of the research, it meant that I met with each participant face-to-face, at their workplace, for between 30 to 50 minutes each. Although I was an outsider researcher, I believe that my age, cultural background, and professional qualifications, which were not dissimilar to those of the interview participants, facilitated my easier establishment of a rapport with the interviewees than might otherwise have been the case.

In my former work as a military lawyer, I was regularly required to explain the impact of both military and civilian law to superior officers and subordinates in order that they could do their jobs properly and within the law. I am firmly of the view that school principals, regardless of their schooling sector, deserve the benefit of a similar legal support framework.

*Figure 32. Researcher reflexivity statement.*

### **Participants and sampling.**

#### ***Research populations and samples.***

The research population for the survey phase of the study consisted of 261 appointed and acting principals of Tasmanian schools, made up of 195 principals of government schools (Department of Education (Tasmania), 2013-14), 37 principals from the Catholic education system (Tasmanian Catholic Education Office, 2013-2014), and 29 Independent school principals (Department of Education (Tasmania), 2013-14). As this population constituted persons

employed as school principals, it was likely to provide data relevant to the research aim. The population for the interview phase of the study was much wider, encompassing an unspecified number of persons with a working knowledge of education law and the principalship in Tasmania.

Neither sample from which data were obtained was probability-based (Cresswell & Plano Clark, 2007; Punch, 2003). The participants in the survey phase constituted a non-random volunteer sample of Tasmanian school principals. Their participation turned on awareness of the survey through notices from the hosting organisations (the Tasmanian Principals' Association, Independent Schools Tasmania and the Association of Heads of Independent Schools Australia, Tasmanian Branch), their employment status, and their willingness to respond to the on-line survey. As noted elsewhere, the small sample size and non-random basis of the survey sample did not support generalization of the survey findings. However, in this mixed method study, the survey findings (representing both quantitative and qualitative data obtained from the sample of Tasmanian school principals) were triangulated with qualitative interview data to produce more robust and reliable results (Cresswell & Plano Clark, 2007; Denzin, 1978; B. Johnson et al., 2007).

In contrast to the survey sample, which was populated exclusively by appointed or acting principals of Tasmanian schools, the sample of participants interviewed for the study encompassed a wider mix of persons. The interview sample did include a number of school principals (some of whom had responded to the survey), as well as principal network leaders, senior system leaders, administrators and an education lawyer. These participants were recruited purposively, on the basis of their expert knowledge (O'Leary, 2010) of the impact as education law on the principalship in Tasmania, at school and systemic or sectoral levels. A combination of recruitment techniques was adopted for the interview phase of the study. Firstly, all school principals who responded to the survey were invited to participate in an interview conducted by the researcher. Those who indicated an interest in doing so were provided with the requisite documentation, and interviews were arranged. This group formed a *nested* component (K. Collins & O'Cathain, 2009) within the survey sample. Secondly, to recruit the 23 remaining interview participants, a *snowball* technique was used (Brundrett & Rhodes, 2014; Sarantakos, 2005; Neuman, 2009). Senior system leaders and administrators from all three schooling sectors were identified and invited to participate in a short interview. A number of Government, Catholic

and Independent leaders and administrators kindly agreed to be interviewed. Those participants were then asked to recommend people who might have useful insights to share regarding education law. The suggestions offered by the key informants were followed up by personal invitations and interviews. This strategy proved particularly useful in identifying persons in the different education sectors with relevant experiences and knowledge, but without a high public profile. To avoid any perception of influence the key figures' recommendations were not mentioned in the invitations to prospective interview participants.

### ***Survey participants.***

From 35 people who accessed the on-line survey, 34 indicated their eligibility to participate and went on to complete the survey. Demographic data regarding the survey participants and their schools are set out in Table 11.

Table 11.

### *Survey Demographic Data*

<b>VARIABLES RELATING TO PARTICIPANTS</b>	<b>#</b>	<b>%</b>
<b>Age:</b>		
25-35 years	2	6%
36-45 years	3	9%
46-55 years	16	47%
56 years +	13	38%
<b>Experience as principal:</b>		
Up to 2 years	12	35%
2-5 years	5	15%
More than 5 years but less than 10	7	21%
10 years or more	10	29%
<b>VARIABLES RELATING TO PARTICIPANTS' SCHOOLS</b>	<b>#</b>	<b>%</b>
<b>Location in Tasmania:</b>		
Greater Hobart and Southern Midlands	18	55%
North, North East and Off-Shore	9	27%
Mersey-Lyell	6	18%
<b>Schooling sector:</b>		
Government	23	68%
Catholic	3	9%
Independent	8	24%

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<b>Context:</b>		
Metropolitan (close proximity to Hobart)	14	41%
Provincial (close proximity to Launceston, Burnie or Devonport)	11	32%
Rural	8	24%
Isolated	1	3%
<b>Category of school:</b>		
Primary only	13	38%
Secondary only	3	9%
Combined	15	44%
Special	1	3%
Senior secondary only (college)	2	6%
<b>Student enrolments:</b>		
Less than 200	12	35%
200-500	11	32%
More than 500	11	32%

---

The sample contained a relatively small percentage of younger principals, with most identifying as being in the middle part of their working lives and a lower proportion identifying as older. Half of the participants were in the early years of principalship with the remainder having had a moderate or considerable amount of school leadership experience. Participants' schools were distributed throughout Tasmania, with most situated in close proximity to a city (near Hobart, Launceston, Burnie or Devonport). The participants worked throughout the three education sectors in Tasmania, with more than two-thirds from government schools, one quarter from Independent schools and the remainder from Catholic schools. Participants' schools ranged across the school categories, from primary to senior secondary. School enrolments were fairly evenly spread.

### ***Interview participants.***

The qualitative interviews for this study were conducted during two different time periods; with the first nine interviews undertaken from 3 — 24 June 2014, with 17 more carried out between August — December 2015. A list of the participants who were interviewed during the two qualitative data collection stages is set out in Appendix L. There were no relevant differences in the characteristics of the two groups of interviewees.

### **Data collection instruments.**

Quantitative data were collected through principals' answers to closed-ended questions contained in the on-line survey, whereas the collection of qualitative data encompassed responses to open-

ended questions from the survey, the series of semi-structured interviews with participants throughout the Tasmanian education sector, and scans of Tasmanian newspaper articles about education law. Table 12 links items from the survey and the interview schedules with the study research questions.

Table 12

*Survey and Interview Schedule Items Linked to Research Questions*

Survey Items	Demographic	RQ 1.1 Legal areas	RQ 1.2 Legal knowledge	RQ 1.3 Legal sources	RQ 2 Legal Consciousness	RQ 3 Legal environment	RQ 4 Legal costs	RQ 5 Legal support
1-8. Background	✓							
9-12. Tertiary legal training			✓					✓
13-14. Legal CPD			✓					✓
15-18. Routine legal matters – sources of information				✓				✓
19-22. Non-routine legal matters – sources of information				✓				✓
23. Confidence in legal knowledge			✓					
24, 26, 28, 30. Dealings with discrimination Law		✓	✓					
25, 27, 29. Legal knowledge questions			✓					
31-32. Areas of law dealt with		✓						
33. Dissatisfaction with legal knowledge			✓					✓
34. Time spent on legal issues							✓	
35-36. Legal stress						✓	✓	
37-41. Additional CPD		✓						✓



Survey Items	Demographic	RQ 1.1 Legal areas	RQ 1.2 Legal knowledge	RQ 1.3 Legal sources	RQ 2 Legal Consciousness	RQ 3 Legal environment	RQ 4 Legal costs	RQ 5 Legal support
42. Other legal support								✓
<b>Interview Schedule (A)</b>								
1. Professional impact of legal issues							✓	
2. Adequacy of legal preparation			✓					✓
3. Managing legal risk						✓		
4. Concerns								✓
<b>Interview Schedule (B)</b>								
1. Ideas connected with law					✓			
2. Personal & professional impacts of legal issues							✓	
3. Access to legal advice				✓		✓		✓
4. Principal as legal trainer			✓			✓		
5. Is change needed?								✓

### ***Survey instrument.***

The survey instrument (Appendix D) was designed for on-line application, using the Qualtrics (2014) platform. It contained 43 items, which were a mix of closed-ended quantitative, and open-ended qualitative questions, divided into seven parts. The first part (items 1 to 8) asked demographic questions about the participant and his or her school. Questions in the second part (items 9 to 14) related to the participant's legal education. The third part (items 15 to 18) contained questions concerning the information sources relied on by the participant in dealing with routine legal matters, and their usefulness, followed by similar questions in relation to non-routine legal matters (items 19 to 22). Items in the fourth part of the survey (items 23 to 30) included questions in relation to the participant's confidence in their own knowledge of

discrimination law, their level of experience with discrimination law, and their knowledge of Tasmanian discrimination law in terms of disability, sex and racial discrimination. Four multiple-choice sub-questions were posed in respect of each discrimination topic. The fifth part of the survey (items 31 to 34) addressed the participant's legal dealings during their principalship, including the legal areas they had dealt with, the frequency of the issues, any dissatisfaction they had with their own knowledge, and the time taken up by legal matters. Part six (items 35 to 36) concerned personal impacts from dealing with legal matters, including three sub-questions in relation to legal stress, and the seventh and final part (items 37 to 42) addressed the need for more legal education for principals, legal areas of highest priority, the preferred mode for such training, and further comments. The survey ended with an invitation to participate in the interview phase, and a link to register interest. Although the survey instrument for this study was drafted by the researcher, the individual items, to a greater or lesser degree, reflected survey questions used by previous researchers—see Table 13.

Table 13

*Comparison of Research Questions with Previous Studies*

Research Questions	Stewart (1996)	McCann (2006)	Trimble (2011)	Present Study
1. Legal Literacy	✓	✓	✓	✓
1.1 Legal areas	✓	✓	✓	✓
1.2 Legal knowledge	✓	✓	✓	✓
1.3 Legal sources	✓	✓	✓	✓
2. Legal Consciousness	X	X	X	✓
3. Legal Environment	limited	limited	✓	✓
4. Legal Costs	limited	limited	X	✓
5. Legal Support	✓	✓	✓	✓

### ***Interview schedules.***

The researcher also prepared a number of *interview schedules* for the study (Appendices E and F). An interview schedule is, “a document prepared by the interviewer prior to the interview which outlines the questions that will be asked in the interview itself” (Brundrett & Rhodes, 2014, p. 82). With the form of interviewing adopted in this study, the semi-structured nature of the interviews meant that the question topics listed in the interview schedules were for general guidance. A number of different schedules with slight adjustments of focus were prepared for interviews with participants from different backgrounds, including: school principals; principal network leaders; senior system leaders; administrators; and lawyers. In all instances, the schedules were provided to participants prior to their interviews so that they had an opportunity to consider the material, and their responses before the interview itself.

It will be recalled that after the initial interviews were conducted for this study the research was suspended for 12 months. On recommencement it was refocused, in light of the emergent themes from the earlier data. A second set of interview schedules (Appendix F) was developed for those later interviews.

## **Research Data**

### **Data collection.**

The main data collection vehicles for this study were an on-line survey, which produced quantitative data from closed-ended items and qualitative data from open-ended items, together with a series of qualitative interviews conducted by the researcher. The on-line survey was available to appointed and acting Tasmanian school principals from 3 May–3 October, 2014. During that period the Tasmanian Principals’ Association, the Tasmanian branch of the Association of Heads of Independent Schools Australia, and Independent Schools Australia<sup>8</sup> published several notices to their members concerning the survey and providing the internet web link. In total, 35 people commenced the survey and one discontinued at the outset due to ineligibility. Participants’ responses to the survey items were automatically anonymised and saved to the Qualtrics site, which was accessible only by the researcher and her supervisors.

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<sup>8</sup> The TPA includes only Government school principals, whereas the AHISA (Tasmania) and IST membership includes both Catholic and Independent school principals.

Interview data collection was undertaken in two stages, with early interviews conducted in June 2014 and later ones during August – December 2015. Each interview was conducted by the researcher, face-to-face, generally with a single participant (although two interviews were with two participants at their request). The interviews were semi-structured in nature, in that they followed a general framework to ensure critical points were covered (Bell, 2005; Cohen, Manion, & Morrison, 2011). However, the researcher remained free to reformulate questions, give prompts, and follow-up points of interest (Morgan, 1998; Rubin, 2005; Sarantakos, 2005). Being mindful of the work and time pressures affecting educators, the researcher tried to minimise the disruption caused for participants:

- Interviews were structured to take 30 minutes or less, although a number of participants elected to extend the duration.
- Participants were asked to nominate a convenient time and place for the interviews to be conducted, and the researcher travelled as required.

The interviews were recorded (with participant permission) using two digital recording devices.

### **Data management.**

Data management has been identified as a particularly important step in the research process between data collection and analysis (Kumar, 2011; O'Leary, 2010). Regarding the survey, it was locked on closure so that the response data could not be altered. A copy of the data was then exported to the researcher's password-protected computer as a Microsoft Excel (Microsoft Office 2010, version 14.0.7180.5002) spreadsheet. The responses were screened for completeness, and coded in accordance with the relevant variables (O'Leary, 2010). Entries were then checked for reasonableness and consistency prior to the quantitative data being copied to the IBM SPSS (2016, version 24.0) software package for analysis. The qualitative responses were consolidated into a report based on the original survey items and copied into a Microsoft Word (Microsoft Office 2010, version 14.0.7180.5002) document.

The recorded interviews were transcribed by the researcher into individual Microsoft Word (Microsoft Office 2010, version 14.0.7180.5002) documents in data order. The transcripts were then anonymised. Firstly, a pseudonym was substituted for each participant's name, with the exception of two interviews in which the participants chose to be identified by their own names. Secondly, any other identifying information was removed, such as family names and school locations. The transcripts were checked for entry accuracy, and were forwarded to

participants for member checking (Fossey et al., 2002; Ivankova, 2014; Tashakkori & Teddlie, 1998). Amendments requested by participants were actioned prior to the qualitative data analysis. At the conclusion of the research, electronic copies of the quantitative and qualitative data were moved from the researcher's computer to a portable storage device, which was then stored in a locked cabinet in the office of the study's Chief Supervisor. All paper copies of data were securely destroyed.

### **Data analysis.**

Cresswell and Plano Clark (2011) have observed:

Data analysis in mixed-methods research consists of analysing separately the quantitative data using quantitative methods and the qualitative data using qualitative methods. It also involves analysing both sets of information using techniques that "mix" the quantitative and qualitative data and results - the mixed-methods analysis. (p. 203)

The original research design for the present study required the concurrent analysis of both quantitative and qualitative data, using quantitative and qualitative analyses methods (K. Collins, Onwuegbuzie, & Jiao, 2007; Cresswell & Plano Clark, 2011; Hesse-Biber, 2010). The revised design, however, permitted analysis of the later interviews to follow that of the earlier ones. As there was no mixed methods integration until the inferential stage specific mixed methods analysis techniques such as data transformation, were not required (L. Doyle et al., 2016; Greene, 2008; Onwuegbuzie & Combs, 2010).

### ***Analysis of quantitative data.***

The quantitative data collected for this study were analysed on the basis of descriptive statistics (data reduction) and graphical software techniques (data display). Calculations were made using the Qualtrics (2014) on-line platform and the SPSS Statistics program (IBM 2016, version 24.0). Onwuegbuzie and Teddlie (2003) have suggested that the use of descriptive statistics is appropriate for the analysis of quantitative data in mixed method studies that, like the present, are exploratory in nature, where the objective is to extend existing knowledge. The non-probabilistic nature of the survey sample, together with the limited sample size, did not support the application of inferential statistical tests such as variance and regression. (Bouma & Ling, 2004; L. Delaney, 2009; Kandola, Banner, O'Keefe-McCarthy, & Jassal, 2014).

The data reduction stage of the quantitative analysis (Onwuegbuzie & Teddlie, 2003) involved coding, and calculating descriptive statistics. The data were coded according to the

variables examined in the survey. In some instances data were recoded to reduce the possible values, for example, the legal knowledge multiple-choice responses were recoded to produce dichotomous correct/incorrect responses (Punch, 2009; Sarantakos, 2005; Thomas, 2009). A number of descriptive statistics were developed in relation to the data, including measures of central tendency: means, medians and modes; as well as measures of dispersion: standard deviations, and ranges (M. Fisher & Marshall, 2009; Raeburn, 2012; Sarantakos, 2005). Several variable categories were also cross-tabulated to determine the frequencies of combined characteristics within the data (Rossman & Wilson, 1985; Wetcher-Hendricks, 2011). When survey items used a Likert-type scale, such as item 35 regarding legal stress, or produced responses coded as dichotomous, as were the legal knowledge questions at items 25, 27 and 29, the Cronbach's alpha test was applied to determine the internal consistency of the items (O'Dwyer & Bernauer, 2014; Reynaldo & Santos, 1999). Reduction of the quantitative data was followed by the data display process which involved the translation of the data results into "easily understood configurations" (Miles & Huberman, 1994, p. 11) such as quantitative data tables, and graphs (O'Dwyer & Bernauer, 2014; O'Leary, 2010; Onwuegbuzie & Teddlie, 2003).

#### *Analysis of qualitative data.*

The qualitative data collected for this study were all in text form. The literature suggested that iterative thematic analysis using a constant comparison technique would be appropriate (Braun & Clarke, 2006; Onwuegbuzie & Teddlie, 2003; Percy, Kostere, & Kostere, 2015). Thematic analysis has been described as, "a method for identifying, analysing, and reporting patterns (themes) within data" (Braun & Clarke, 2006, p. 79; see also Vaismoradi, Turunen, & Bondas, 2013) with the researcher searching for and identifying common threads both within and across data sources (De Santis & Ugarriza, 2000; Orpin, 2009). As pointed out by Percy and colleagues (2015), the process of thematic analysis with constant comparison commences during data collection with the researcher's focus moving between current data and that previously obtained, looking for both description, and interpretation. An important element of thematic analysis which makes it particularly suitable to mixed methods studies is its combination of inductive and deductive (Pragmatic *abductive*) logic. Using abduction, the researcher considers the data in light of pre-existing themes identified from the literature but at the same time is sensitive to new patterns that emerge during the analysis (Percy et al., 2015; Teddlie & Tashakkori, 2010; Vaismoradi et al., 2013).

In this study the researcher made a conscious, research-based decision to personally transcribe the recordings of the participant interviews in order to maximise her active engagement with the research material from the outset. This approach was reinforced through multiple re-readings of the transcripts to thoroughly familiarise herself with the interview data as a whole, prior to commencing the substantive data analysis (Braun & Clarke, 2006; Vaismoradi et al., 2013). The researcher also chose not to use a software program for the quantitative data analysis, although appropriate software was available through UTAS. The decision to use manual coding was based on a number of factors: the numbers of pages of text were not unmanageable; and the researcher felt comfortable with manual coding and theme development. The principal reason for the decision, however, was the researcher's desire to maintain an unmediated visual and tactile connection with the data.

The qualitative data reduction involved the systematic allocation of codes to the data which were subsequently developed into higher-order themes (Miles & Huberman, 1994; Onwuegbuzie & Combs, 2010; Punch, 2009). Initial codes were given to words, phrases and sentences in the text material that seemed to "stand out" (Bryman et al., 2008, p. 298). As the data were continually reread and compared, those descriptive topic codes were replaced with more abstract categories (Hesse-Biber & Leavy, 2011; Kennedy, 2016). The data were then examined to identify the emergent interconnections and patterns. Corresponding patterns were placed together and direct quotes were identified from the data to illustrate the categories (Bryman et al., 2008; Genapathy, 2016; Percy et al., 2015). The patterns within the data were then examined for overarching themes, operating at a higher level of abstraction again, and data were gathered under those themes (Braun & Clarke, 2006; Morgan, 1998; Percy et al., 2015). Throughout the qualitative analysis process the researcher remained mindful of the research questions for this study, which helped to shape her subjective decisions in coding and categorising the data (Punch, 2009; Vaismoradi et al., 2013).

### **Research Quality**

A mixed methods study is more than just the sum of its quantitative and qualitative parts (Cresswell & Plano Clark, 2011; Heyvaert et al., 2013; O'Cathain, 2010). As such, writers suggest that the combined application of quantitative and qualitative quality criteria is insufficient and should be accompanied by specific mixed methods quality assurance. This section discusses the research quality of the project in a three-part process commencing with the

validity of the quantitative phase, followed by the trustworthiness of the qualitative phase, and completed by legitimisation strategies appropriate to a concurrent quan + QUAL (Morse, 1991) mixed methods study.

### **Validity of quantitative data results.**

*Validity* has been described as, “the touchstone of all types of educational research” (Cohen, Manion, & Morrison, 2007, p. 134), based on congruence between an operational definition and the concept it purports to measure (Singleton & Straits, 2010). In the present study a number of aspects contributed to the overall validity of the quantitative data collected.

Content validity of the survey instrument was established through reliance on the questionnaire items developed by Stewart (1996b) and later used by McCann (2006), together with the earlier survey items used by the researcher (2011). Connections among those instruments is set out in Appendix M. Survey content was further validated through scrutiny by a small, expert panel of university academics, experienced practicing principals from interstate, and retired Tasmanian school leaders. The survey was tested by a group of higher research degree educator candidates. It was not, however, piloted with potential participants. All recommendations for improving the survey instrument were adopted. (Babbie, 2010; Sarantakos, 2005; Singleton & Straits, 2010). Following its administration the internal consistency reliability of the survey scale items was assessed using the Cronbach’s alpha test. The values for Likert-type fixed response items ranged from 8.8 for the items relating to legal stress, to 7.15 on the legal knowledge items, and 6.34 for items concerning the frequency of dealings with discrimination issues. Given the widely accepted standard of 70% reliability the test results indicate that the discrimination dealings questions should be reviewed before further use.

Regarding the internal validity of the survey data, and recognising the researcher’s incapacity to control the environments in which the surveys were answered, it is acknowledged that extraneous sources of variance may have influenced the quantitative results, especially in relation to the legal knowledge questions. Given the non-experimental conditions of the on-line survey, participants could have received assistance in answering the legal knowledge questions from another, more legally expert, source. The knowledge test results should, therefore, be considered with some degree of caution.

In terms of the external validity of the survey data, defined by Singleton and Straits (2010) as, “the generalisability of research findings both to specific populations and across



populations, settings and times” (p. 203), the school principals who participated in the survey did not constitute a probability sample. Accordingly, no firm claims can be made regarding its representativeness against the target population. The study’s quantitative findings should not be generalised to any other population (Cohen et al., 2011; O'Dwyer & Bernauer, 2014; Punch, 2009).

### **Trustworthiness of qualitative data results.**

In qualitative research the concept of validity is often expressed in terms of the *trustworthiness* of data and findings based on the degree to which data accurately gauges what is being measured (Gay, Mills, & Airasian, 2009; Lincoln & Guba, 1985; Rallis & Rossman, 2012). As Cresswell (2007) has advocated, a number of strategies were adopted to ensure the trustworthiness of the qualitative data and findings. They included the following:

- Use of low-inference descriptors: verbatim quotes were used rather than a general sense of what was said during interviews (Cohen et al., 2011; Gibbs, 2007; Silverman, 2005).
- Member checking. Participants were afforded the opportunity to check their interview transcript. This process helped to ensure accuracy in the data, but also empowered participants to express and control their own voice in the research. Although most participants confirmed the transcripts, some took the opportunity to clarify their views and the intent of their comments. All participant requests for transcript changes were actioned (Fossey et al., 2002; Ivankova, 2014; Tashakkori & Teddlie, 1998).
- Participants were recruited, and data collected, until saturation and replication indicated comprehensiveness (Kitto et al., 2008; Morse, Barrett, Mayan, Olson, & Spiers, 2002; Silverman, 2006).
- Negative cases were sought out and included in the qualitative data and findings (see, e.g. Hesse-Biber, 2010; Silverman, 2005), for example, the criticisms of DoE legal policy reported in the *Re Levi* Coroner’s finding (*Levi, R. (2012) TASCD 92*).
- Thick descriptions were used to convey the milieu within which Tasmanian school principals make legal decisions (Cresswell & Plano Clark, 2007; Tashakkori & Teddlie, 1998). Elements of those descriptions were incorporated into the legal environment model at Figure 30.

- It was acknowledged that the product of qualitative research is invariably influenced by the researcher's background and views. Accordingly, a reflexivity statement was included in this report (Gibbs, 2007; Kitto et al., 2008).

### **Legitimacy of mixed methods data results.**

The following strategies based on the research design of the study were adopted to strengthen the legitimacy of the mixed methods findings, conclusions, and meta-inferences.

#### ***Elaboration on unexpected quantitative results.***

The mixed methods design of the study permitted the researcher to further investigate unexpected results that arose from the initial quantitative phase through the qualitative interviews (Bryman, 2006; Ivankova, 2014; Morse & Niehaus, 2009). In this study, the survey results concerning participants' level of legal stress were lower than reported in previous Australian research. That issue was then followed up in the semi-structured interviews with school principals, principal network leaders, senior system leaders and administrators, who made it clear Tasmanian principals did experience high levels of legal stress. They pointed out that legal stress was not necessarily limited to the legal issue at hand (which was the focus of the survey question) but also arose indirectly as a consequence of the flow-on effects experienced by the students in their care, the families within the school community, and school staff.

#### ***Triangulation.***

The present study incorporated both *methodological* and *data triangulation*. Methodological triangulation was described by Burns (1997) as, "the use of two or more methods of data collection in the study of some aspect of human behaviour" (p. 324) which, in the present study, generally involved survey and interview data collection methods. Data triangulation refers to the sources from whom the data was collected (Denzin, 1978; B. Johnson et al., 2007). In the present case data was sought not only from the focal class of Tasmanian school principals but also from principal network leaders, senior system leaders, educational administrators, and a legal adviser, all of whom were knowledgeable about school principals' legal responsibilities and brought different perspectives to the inquiry.

Woods (2006) has suggested that the triangulation process operates as a form of structural corroboration in which one form of data reinforces or modifies another. In this study both horizontal and vertical triangulation were incorporated as critical elements of the research

design. In this study, triangulation produced a rich picture that was more fully rounded than if a single source or form of data had been adopted.

***Inference transferability.***

The transferability of mixed methods inferences to other settings and populations is an issue much considered by Tashakkori and Teddlie (2008, 2003; 2009; see also Cresswell, 2010). In this study the non-random nature of the quantitative sample precluded any simple transferability of the mixed methods findings. However, the construction of the research samples have been reported transparently, supporting use of the meta-inferences as relevant insights (O'Cathain, 2010) and lessons learned for schooling systems similar to those in Tasmania.

**Low survey response rate.**

A common criterion for judging the quality of a survey is its response rates (Castillo, Curtis, Brundage, March, & Stockslager, 2014; De Vaus, 2014; Pederson & Nielsen, 2016; Stoop, 2012). The survey population for this study consisted of appointed and acting principals of Tasmanian schools from government, Catholic, and Independent schools, which amounted to 261 school leaders at the time of data collection. Some 35 responses were received to the survey, with 34 participants providing a response to most items, resulting in a response rate of 13% and a concomitant non-response rate of 87% (De Vaus, 2014; Pazzaglia, Stafford, & Rodriguez, 2016). The researcher was aware of the potential for a low response rate in on-line surveys and made a number of arrangements to maximise participation, including:

- organisational hosting and sponsorship (De Vaus, 2014; Pederson & Nielsen, 2016);
- data anonymisation (De Vaus, 2014; Fowler et al., 2011);
- extended duration and reminders (Kaplowitz, Hadlock, & Levine, 2004; Nulty, 2008);
- and
- an incentive lottery (Fowler et al., 2011; Singer & Ye, 2013).

Notwithstanding these measures the response rate for the survey was low. The data did not highlight any clear reason for the low level of responses, although the executive status of the target population, their recognised “time poverty” (D. Bacon, Johnson, & Stewart, 2016, p. 95), and a level of survey fatigue (Anseel, 2010; Stoop, 2012) may have contributed.

Baruch and Holton (2008) have explained:

The level of response rate is an important, sometimes crucial factor in assessing the value of research findings. When responses are obtained from a non-random group that differs

from the population in terms of the variable of interest, it is possible for such differences to cause distortion of the “true” effects... A high rate of non-response creates heightened probability of statistical bias. (p. 1140)

When systematic differences exist between survey participants and population members who did not participate, the nonresponse bias may mean that the study findings based on the participants’ responses cannot validly be generalised to the entire sample, and may call into question conclusions concerning the population as a whole (Anseel, 2010).

In this study the survey sample was non-random. Inclusion turned on the participants’ awareness of the survey and their personal decisions to provide a response. Its findings could not be statistically generalised to the population of school leaders. As such, the risks of response bias from the low response rate were not applicable. It is noted, however, that two recent and important education law studies from the United States, conducted by Eberwein (2008) and Burch (2014), also employed non-probability samples, and achieved response rates of 6% and 14% respectively, suggesting that the level of participation in this study remains within the boundaries of the education law research tradition.

## **Research Ethics**

Hesse-Biber (2010), a noted mixed methods author, commented:

Discussions of mixed methods research designs, like discussions concerning other research projects, often ignore or do not fully address the problem of ethics in social science research. Yet in order to ensure the validity and accuracy of one’s research, it is important for researchers to discuss the ethical implications of their research. (p. 55)

Following consideration of the validity, trustworthiness, and legitimacy issues relating to the study, the discussion now shifts to the ethical framework within which it was conducted.

### **Institutional ethics structure.**

This study was carried out under the auspices of UTAS, and was subject to UTAS policy in relation to research ethics (2015a). That policy, amongst other matters, binds UTAS researchers to comply with relevant legislation, guidelines, and codes, including the standards laid down in the *Australian code for the responsible conduct of research* (National Health and Medical Research Council, the Australian Research Council, & Universities Australia, 2007), and the *National statement on ethical conduct in human research*, (the *National Statement*) (National

Health and Medical Research Council, the Australian Research Council, & the Australian Vice-Chancellors' Committee, 2007, updated to 2014).

The UTAS ethics policy (2015a) also compels researchers to obtain ethical approval from the relevant committee. As this study involved collecting data from human participants, approval was sought from the Tasmanian Social Sciences Human Research Ethics Committee (HREC) (University of Tasmania, 2015b) which was granted in May 2013. A copy of that approval is at Appendix A, page 1. That original approval was the subject of two subsequent amendments – see Appendix A, pages 2 and 3. As the study involved the researcher attending some interviewees' schools, it was necessary to obtain system-level approval to do so, from the Tasmanian DoE, as well as the TCEO (see Appendix B, pages 1 and 2). The study was conducted in accordance with ethical approval conditions; however, during its conduct a small number of noteworthy ethical issues arose.

### **Application of ethical principles.**

#### ***Confidentiality.***

The *National Statement* (National Health and Medical Research Council et al., 2007, updated to 2014) provides that researchers should respect the confidentiality of participants and their communities, although it provides no explanation as to what constitutes *confidentiality*. Vogt et al. (2012), suggest that confidentiality involves a “promise not to tell” (p. 247; see also G. Davidson, Allan, & Love, 2010). The duty of confidentiality in the present study was understood as requiring the researcher to undertake to each participant that certain information provided by that person would not be disclosed, in the research reporting or otherwise, and to honour that promise (Blaxter, Hughes, & Tight, 2001).

The potential for a confidentiality issue did arise in this study, and similar concerns may occur increasingly for researchers in schools, reflecting the legislative movement for mandated welfare notifications by teachers and education authorities (Goldman, 2007; Mathews, 2011). The issue concerned the possibility that a participant might disclose information to the researcher about their own, or another person's, illegal conduct. As there is no legal *privilege* attached to communications between a researcher and participant<sup>9</sup> (C. Doyle & Bagaric, 2005; Pipes,

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<sup>9</sup> Unlike communications between lawyer and client, priest and penitent, doctor and patient, and spouses (for a discussion of evidentiary privilege, see Arenson & Bagaric, 2002).

Blevins, & Kluck, 2008; M. Taylor, 2012), the researcher could be compelled by law to disclose such information despite having given an assurance of confidentiality.

To minimise the impact of this issue, and as suggested by the UTAS Faculty of Education Ethics Adviser, a number of notices were inserted throughout the public documents for the study advising participants that information concerning illegal conduct fell beyond the scope of the research and requesting them not to include information about such conduct in their responses. Further, in the event that such information was raised, it was made clear in the Participant Information Sheet and the Consent Form (see Appendix C) that the research team (consisting of the researcher and supervisors) would maintain the duty of confidentiality subject to any legal requirements. In addition, basic advice was provided in the Participant Information Sheet for participants and potential participants who held information concerning illegal or criminal activities. These arrangements were given ethics approval and dealt effectively with any threats to confidentiality.

### ***Anonymity.***

Although *anonymity* is not explicitly addressed in the *National Statement* (National Health and Medical Research Council et al., 2007, updated to 2014), the issue of data identifiability is examined in considerable detail in HREC ethics applications. The issue that arose in this study involved what Reamer (2012) has called the “prima facie duty” (p. 555) to protect a participant’s privacy through anonymisation. But what if, by virtue of that action, the researcher is depriving the participant of the ownership of their account? A strong theme in current qualitative research literature suggests that the preferences of participants who wish to be identifiable should be respected (Giordano, O’Reilly, Taylor, & Dogra, 2007; M. Taylor, 2012; Tilley & Woodthorpe, 2011; Wiles, Crow, Heath, & Charles, 2008). This issue was raised with each participant when the transcript of their interview was forwarded to them for checking. Participants were given the option to identify their data in the study with:

- a first name pseudonym selected by the researcher;
- a first name pseudonym they selected; or
- their own first name.

Most participants chose to be represented by a pseudonym selected by researcher although one provided a name that he would recognise, and two participants elected to use their own names.

## **Chapter 4 Overview and Chapter 5**

This chapter has discussed the research methodology of the study. It began by describing the philosophical worldview – Pragmatism – that underpinned the research with its view of reality as both objective and subjective, and the idea that aspects of knowledge, or warranted assertions, only arise from the inquiry process. The methodology of the study was identified as mixed methods, using both quantitative and qualitative methods of data collection and analysis.

The design of the study was examined in detail in this chapter. It reflected a basic concurrent triangulation design that was amended during the research to split the qualitative data collection into two stages, with the later stage being informed by all the earlier-collected data. The mixed methods design was justified on the basis of complementary strengths and non-overlapping weaknesses, together with holistic triangulation producing a more complete understanding of the research topic. The chapter further discussed the samples from which the data were collected, the collection instruments used, data analysis techniques, and the quality of the research data. Chapter 4 closed with a description of the ethical framework within which the study was conducted with particular emphasis on issues of confidentiality and anonymity.

Having laid the methodological foundation in Chapter 4, Chapter 5 provides the first discussion of the research findings. It sets out the quantitative findings in relation to Research Question 1 – *What is the legal literacy of Tasmanian school principals?* In particular it examines the areas of law Tasmanian principals deal with, the level of their legal knowledge, and their sources of legal support.

## Chapter 5

### Research Question 1: Quantitative Findings

#### Introduction

This chapter sets out the quantitative results in relation to Research Question 1 which asked “What is the legal literacy of Tasmanian school principals?” It provides an analysis of the school principal participants’ closed survey responses using descriptive statistics and addresses the following sub-questions:

- areas of law dealt with (Research Sub-question 1.1);
- level of legal knowledge (Research Sub-question 1.2); and
- sources of legal information (Research Sub-question 1.3).

The structure of this discussion is set out in Figure 33.



#### Research Sub-question 1.1 — Areas of Law Dealt With

The initial research question for this study concerned the legal literacy of Tasmanian school principals. The first sub-question that addressed that topic examined the legal areas participants dealt with. Information was collected through the survey about the areas of law with which participants had dealings during their principalships, as well as the frequency with which those issues arose, and participants’ legal CPD in relation to those areas.



### Areas of legal dealings.

In relation to areas of law they had dealt with, participants were offered an extensive list of education law topics drawn from current literature to consider including an open option for any areas not specified. Participants could indicate involvement in multiple legal areas. The participants' responses are set out in Table 14. The data were consistent with previous studies suggesting that school principals face an extremely broad range of legal issues with which they are required to deal (McCann, 2006; Stewart, 1996a; Trimble et al., 2012).

Table 14

#### *Areas of Education Law Dealt with by Participants*

#	Areas of Education Law Dealt With	Responses (n=30)	%
1	Education issues (includes enrolment, home schooling & absenteeism)	29	97%
2	Duty of care issues (includes injuries, supervision & negligence)	26	87%
3	Child welfare issues (includes out-of-home care, abuse & neglect)	25	83%
4	Employment issues (includes workers' compensation, OH&S, teacher registration & workplace relations)	23	77%
5	Family law issues (including divorce, separation, parental responsibility, residence & changing names)	23	77%
6	Social security issues (including school attendance requirements & income entitlements)	18	60%
7	Discrimination issues (includes race, disability, gender, sexual orientation & pregnancy)	16	53%
8	Copyright issues (including reproduction limitations and school exemptions)	16	53%
9	Criminal law (includes drugs, assault, theft, property damage, & search and seizure)	15	50%
10	Privacy/FOI issues (dealing with information)	13	43%
11	Fund-raising issues (including unincorporated associations, donations, sponsorship, lotteries & accounting requirements)	12	40%
12	Immigration issues (includes visas, residence, asylum and immigration)	9	30%

#	Areas of Education Law Dealt With	Responses (n=30)	%
	claims)		
13	Defamation issues (including standards & defences)	4	13%
14	Other issues (Please specify)	0	0%

The data revealed a wide range of involvement with legal issues by participating principals, from the 13% who had dealt with defamation, to the 97% who had faced educational issues concerning absenteeism, enrolments and similar topics. It formed three distinct clusters: minimal involvement in matters of defamation and immigration; a medium level of involvement with fund-raising, privacy/FOI, crime, copyright, discrimination, and social security; and the highest levels of involvement with Family law, employment issues, child welfare, duty of care, and education. Viewed overall, the results clearly indicated that the greatest majority of the surveyed principals had legal dealings with matters associated with the well-being of students and their families, staff and school communities, who, as discussed in the conceptual framework in Chapter 3, figure amongst the school's internal stakeholders.

The same legal issues are again set out in Table 15 and matched with relevant legal materials based on the work of Vitlin and Boesenberg (2013) and drawn from the Australian Legal Information Institute's database (2017). This listing is not exhaustive. For example, it does not include the considerable amount of relevant subordinate legislation. It should, of course, be noted that the legal areas represented participants' dealings during the course of their principalships, not at any one point in time. Nevertheless, Table 15 indicates the heavy information burden borne by principals who wish to research primary legal sources about issues they face.

Table 15

*List of Commonwealth and Tasmanian Acts and Common Law Actions Relating to Areas of Law with which Participants Dealt*

Area of law	Legislation and Common Law
Education issues	<b>Commonwealth Acts:</b> <i>Australian Education Act 2013</i> (Cth); <i>Education Services for Overseas Students Act 2000</i> (Cth); <i>Indigenous Education (Targeted Assistance) Act 2000</i> (Cth).

Area of law	Legislation and Common Law
Duty of care issues	<p><b>Tasmanian Acts:</b> <i>Child Care Act 2001</i> (Tas); <i>Education Act 1994</i> (Tas); <i>Education Providers Regulation (Overseas Students) Act 1991</i> (Tas).</p> <p><b>Common law:</b> Negligent injury to property, Negligent injury to person.</p>
Child welfare issues	<p><b>Tasmanian Acts:</b> <i>Animal Welfare Act 1993</i> (Tas); <i>Civil Liability Act 2002</i> (Tas); <i>Dangerous Goods Act 1998</i> (Tas); <i>Food Act 2003</i> (Tas); <i>Mental Health Act 2013</i> (Tas); <i>Public Health Act 1997</i> (Tas).</p> <p><b>Commonwealth treaty:</b> (United Nations, 1989).</p> <p><b>Tasmanian Acts:</b> <i>Child Protection (International Measures) Act 2013</i> (Tas); <i>Children, Young Persons and Their Families Act 1997</i> (Tas); <i>Youth Justice Act 1997</i> (Tas).</p>
Employment issues	<p><b>Commonwealth Acts:</b> <i>Fair Work Act 2009</i> (Cth); <i>Work, Health and Safety Act 2011</i> (Cth).</p> <p><b>Tasmanian Acts:</b> <i>Annulled Convictions Act 2003</i> (Tas); <i>Children, Young Persons and Their Families Act 1997</i> (Tas); <i>Industrial Relations Act 1984</i> (Tas); <i>Long Service Leave (State Employees) Act 1994</i> (Tas); <i>State Service Act 2000</i> (Tas); <i>Statutory Holidays Act 2000</i> (Tas); <i>Teachers' Registration Act 2000</i> (Tas); <i>Work Health and Safety Act 2012</i> (Tas); <i>Workers' Rehabilitation and Compensation Act 1988</i> (Tas).</p>
Family law issues	<p><b>Commonwealth Act:</b> <i>Family law Act 1975</i> (Cth).</p>
Social security issues	<p><b>Commonwealth Act:</b> <i>Social Security Act 1991</i> (Cth).</p>
Discrimination issues	<p><b>Commonwealth Acts:</b> <i>Age Discrimination Act 2004</i> (Cth); <i>Australian Human Rights and Equal Opportunity Commission Act 1986</i> (Cth); <i>Disability Discrimination (Education Standards) 2005</i> (Cth); <i>Disability Discrimination Act 1992</i> (Cth); <i>Racial Discrimination Act 1975</i> (Cth); <i>Sex Discrimination Act 1984</i> (Cth).</p> <p><b>Tasmanian Act:</b> <i>Anti-Discrimination Act 1998</i> (Tas).</p>
Copyright issues	<p><b>Commonwealth Act:</b> <i>Copyright Act 1968</i> (Cth).</p>
Criminal law issues	<p><b>Commonwealth Acts:</b> <i>Crimes Act 1914</i> (Cth); <i>Criminal Code Act 1995</i> (Cth); <i>Telecommunications Act 1997</i> (Cth).</p> <p><b>Tasmanian Acts:</b> <i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i> (Tas); <i>Criminal Code Act 1924</i> (Tas); <i>Police Offences Act 1935</i> (Tas); <i>Youth Justice Act 1997</i> (Tas).</p>
Privacy and FOI issues	<p><b>Commonwealth Acts:</b> <i>Freedom of Information Act 1982</i> (Cth); <i>Privacy Act 1988</i> (Cth).</p> <p><b>Tasmanian Acts:</b> <i>Personal Information Protection Act 2004</i> (Tas); <i>Right to Information Act 2009</i> (Tas).</p>

Area of law	Legislation and Common Law
Fundraising issues	<b>Commonwealth Acts:</b> <i>Charities Act 2013</i> (Cth); various Taxation Acts. <b>Tasmanian Acts:</b> <i>Collections for Charities Act 2001</i> (Tas); <i>Gaming Control Act 1993</i> (Tas).
Immigration issues	<b>Commonwealth Acts:</b> <i>Immigration (Education) Act 1971</i> (Cth); <i>Migration Act 1958</i> (Cth).
Defamation issues	<b>Tasmanian Act:</b> <i>Defamation Act 2005</i> (Tas).

### Frequency of legal dealings.

In relation to the areas participants indicated they had dealt with the survey also asked how often such issues arose, with responses on a five category scale, from 1 — Never to 5 — Very often. Results are illustrated in Figure 34 based on the mean values of the participants' responses. The

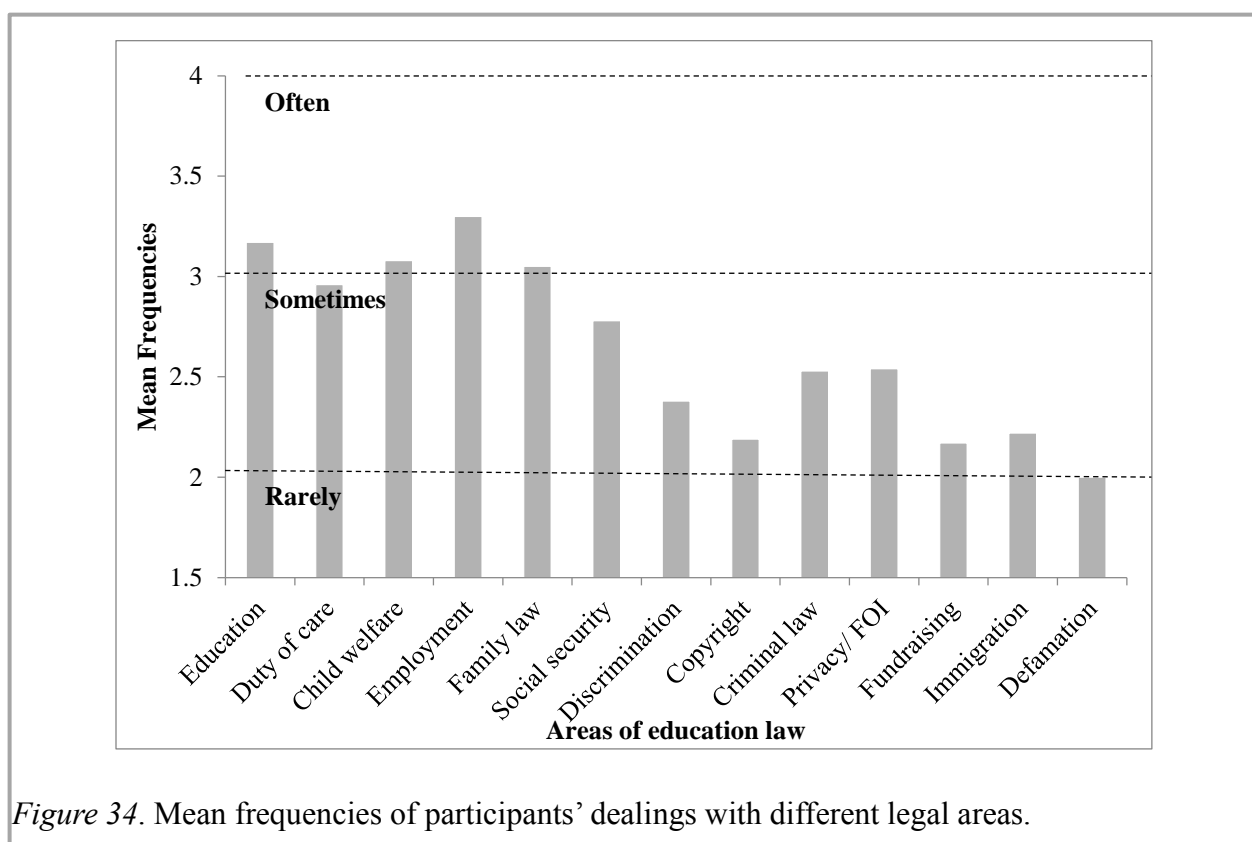


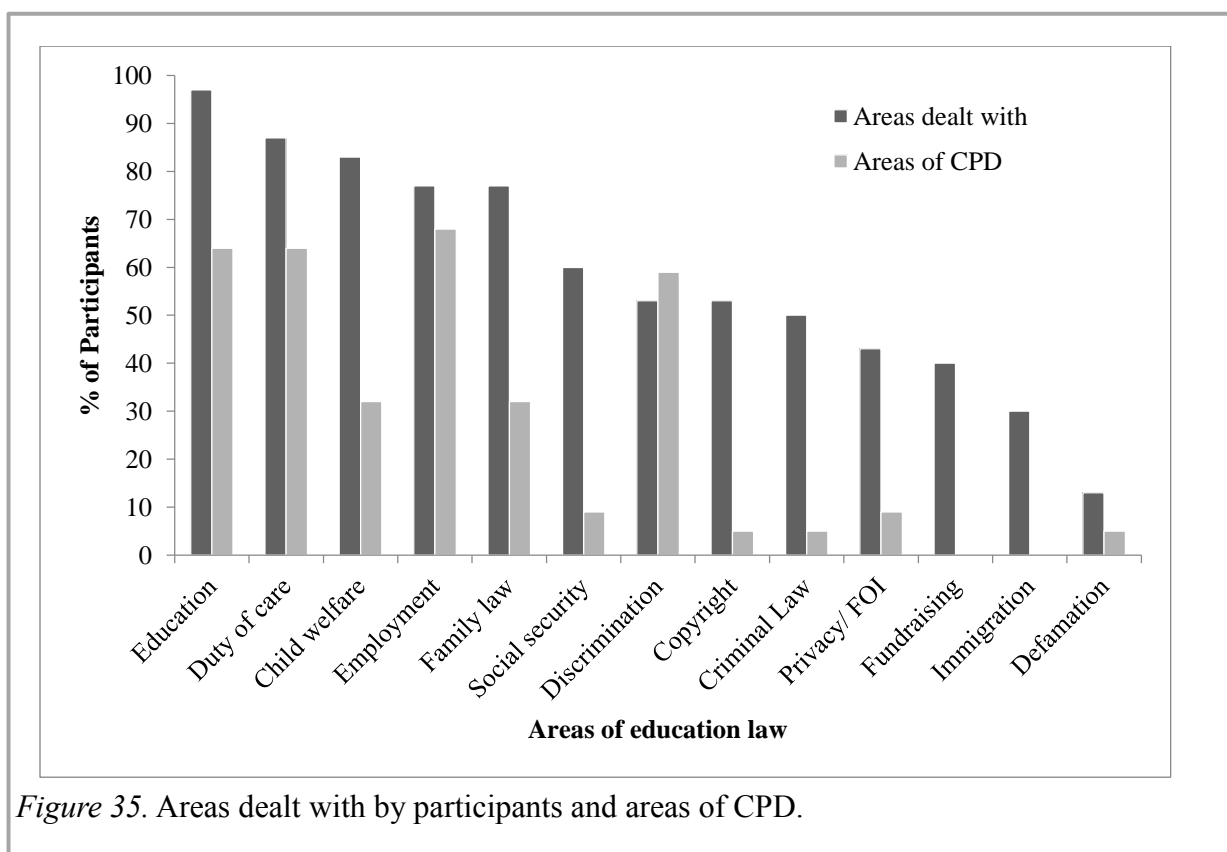
Figure 34. Mean frequencies of participants' dealings with different legal areas.

measures of standard deviation for each of the specified legal topics varied from 0.85 for education issues to 0.44 for immigration issues, indicating that the data were closely grouped around the relevant means. The legal topics with the highest mean frequency responses (above 'sometimes', but not rated as high as 'often') included education, employment, Family law, and

child welfare issues. These responses reinforced the message that the focus of participants' legal involvement concerned the well-being of students, and their families, staff and the school community. The remainder of the topics: duty of care; social security; privacy/FOI; criminal law; discrimination; immigration; copyright; fundraising; and defamation (in order of decreasing frequency) were rated as less than 'sometimes' to 'rarely'.

### Legal CPD.

The survey also collected data in relation to the continuing professional development (CPD) on legal issues undertaken by participants. These data are considered in greater detail in relation to the participants' knowledge of education law. Nevertheless they are also relevant to this discussion of the legal areas dealt with by school principals.



Two-thirds of participants indicated that they had attended CPD on legal issues during the previous year. Figure 35 shows the percentage of participants who had dealings with different areas of education law together with the percentage of participants who attended CPD in relation to those legal areas. No statistical correlation is claimed between the two sets of data. However,

there is a noticeable gap between the proportion of participants who dealt with legal matters and those who attended legal CPD on many of the topics examined. The exceptions are the legal topics of employment and discrimination, which both present distinct points of congruity between legal involvement and legal CPD. These data can perhaps be explained by the introduction of the new Tasmanian Work Health and Safety regime in 2012 and the education program rolled out to the schooling sector, as well as the on-going education programs conducted with schools by the Tasmanian Anti-Discrimination Commissioner.

***Summary— Research Question 1.1 Areas of law dealt with by principals.***

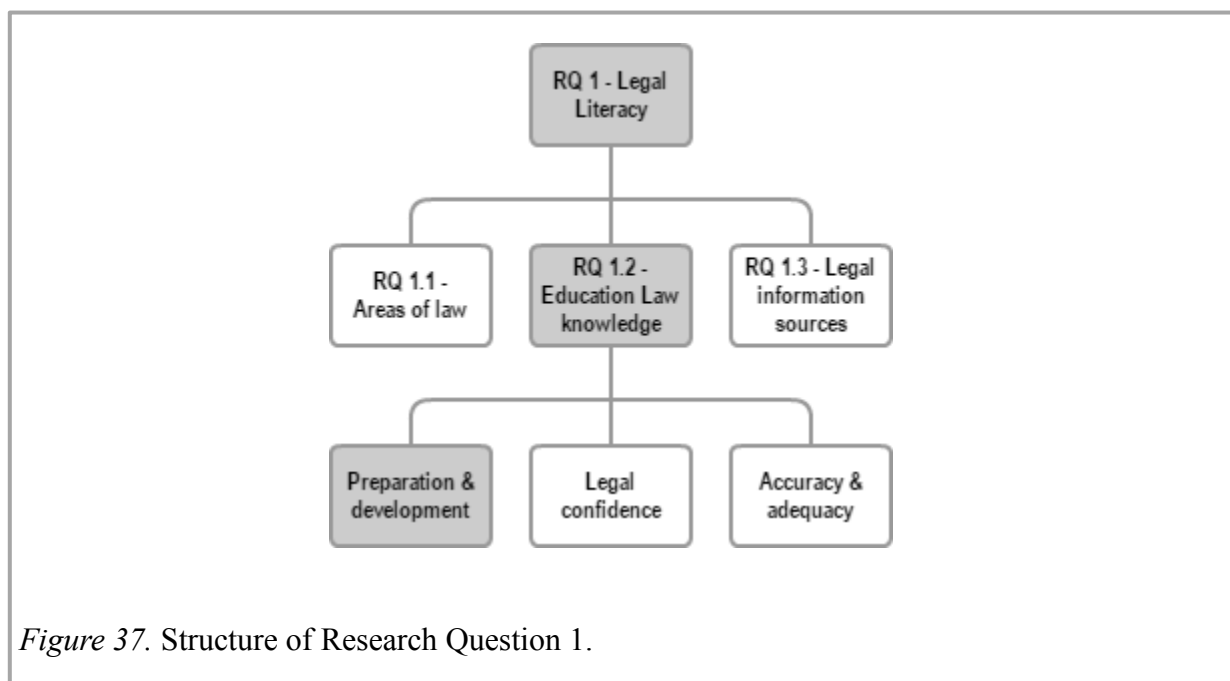
A summary of the quantitative findings regarding the areas of law dealt with by school principals is at Figure 36.

The quantitative data indicated that while the participants reported having dealt with a very wide range of legal issues during their principalships, the greatest involvement was with issues impacting on the safety and welfare of students and their families, school staff, and the school community. All legal areas that principals faced involved a heavy information load. When the areas of legal involvement were considered against the participants' reported CPD, there appeared to be a gap in CPD attendance in a number of areas.

*Figure 36. Summary of Research Question 1.1.*

**Research Question 1.2 — Level of Education Law Knowledge**

The second sub-question regarding Tasmanian principals' legal literacy is Research Sub-question 1.2, "What level of legal knowledge do Tasmanian school principals hold?" A number of the survey items related to that sub-question, most particularly those concerning the participants' legal training (items 9–14), confidence about their knowledge of Tasmanian discrimination law (item 23), experience with Tasmanian discrimination law (items 24, 26, 28 and 30), and knowledge of Tasmanian discrimination law (items 25, 27 and 29). The structure of the findings on this topic is set out in Figure 37.



### **Legal preparation and development.**

The survey questions concerning participants' legal preparation and development sought information about tertiary-level studies, in education law specifically and other legal subjects generally, as well as legal CPD. The numbers of participants who indicated that they had undertaken university study in education law ( $n=3$ ) and in general law ( $n=2$ ) were very small, particularly as one participant responded positively to both questions. Accordingly, the data from both items were amalgamated for reporting purposes to produce a (small) combined measure of participants who had received tertiary legal training ( $n=4$ ).

### ***Tertiary study.***

Some 12% of participants indicated that they had undertaken an amount of tertiary legal study. This response was unsurprising, as there are no formal requirements for Tasmanian school principals to further their knowledge of education law through university-level study.

Interestingly, the participants who had specifically undertaken education law qualifications had done so outside Tasmania: in the United States, and through courses at the Australian Catholic University and the University of New South Wales. Cross-tabulation of the legal training and demographic data from the survey (see Appendix N) revealed that the participants who had undertaken university-level legal studies all practised in the non-government schooling sector, that is, in Catholic and Independent schools.

***CPD.***

The survey responses regarding participants' legal CPD revealed a pattern noticeably different to that for university studies. Some 67% of participants indicated that they had undertaken education law CPD in the previous year (meaning, of course, that a third had not). The legal areas covered by the participants' legal CPD are set out in Table 16. That data fell into three main groups: the highest CPD attendance (education, employment, duty of care and discrimination issues); medium attendance (Family law and child welfare issues); and the lowest attendance (crime, social security, privacy/FOI, copyright, fundraising and defamation issues).

Table 16

*Legal Areas Addressed in Participants' Legal CPD*

#	Areas of Education Law CPD	Responses (n=22)	%
1	Education	14	64%
2	Duty of care	14	64%
3	Child welfare	7	32%
4	Employment	16	72%
5	Family law	7	32%
6	Social security	2	9%
7	Discrimination	13	59%
8	Copyright	1	5%
9	Criminal law	1	5%
10	Privacy/FOI	2	9%
11	Fund-raising	0	0%
12	Immigration	0	0%
13	Defamation	1	5%
14	Other issues	0	0%



When the data for legal CPD attendance was cross-tabulated against the demographic data in relation to the participants (see Appendix O) a number of observations were drawn in relation to the participants who attended legal CPD in the previous year:

- The participants' years of experience in the principalship were distributed across the range from novitiate to senior.
- The greatest majority of participants (88%) were aged in their middle working years or older.
- Most participants were located in Southern Tasmania (41%), with the remainder from elsewhere in the State.
- Some 46% of the participants worked in the government school sector, with 21% from Catholic and Independent schools.
- The participants' schools were largely located in close proximity to Hobart or another city (45%), although a notable proportion (21%) were situated in rural settings.

The obverse data, relating to participants who did not attend legal CPD, was also interesting. Whilst those participants' years of experience was distributed fairly evenly between novitiate, established and senior principals, almost half of the principals aged 56 years and above did not attend any legal CPD.

### **Legal confidence.**

The structure of findings regarding principals' legal confidence is shown in Figure 38. Survey participants were asked to respond to the statement "If I have to deal with a discrimination issue I feel confident about my own level of legal knowledge and understanding". Participants could choose from a range of five responses, from "Strongly Agree" with the statement to "Strongly Disagree". Twenty-three percent of the participants who answered the question (n=31) selected the neutral option of "Neither agree nor disagree" and no participants indicated that they "Strongly Disagreed" with the statement. The analysis of this item will consider the 19% of participants who disagreed with the statement (indicating that they would not feel confident in their legal knowledge), and the 58% who agreed or strongly agreed with it (indicating their confidence in their legal knowledge).

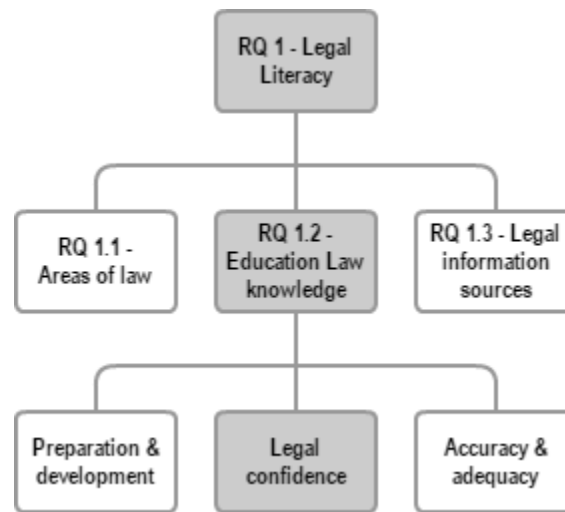


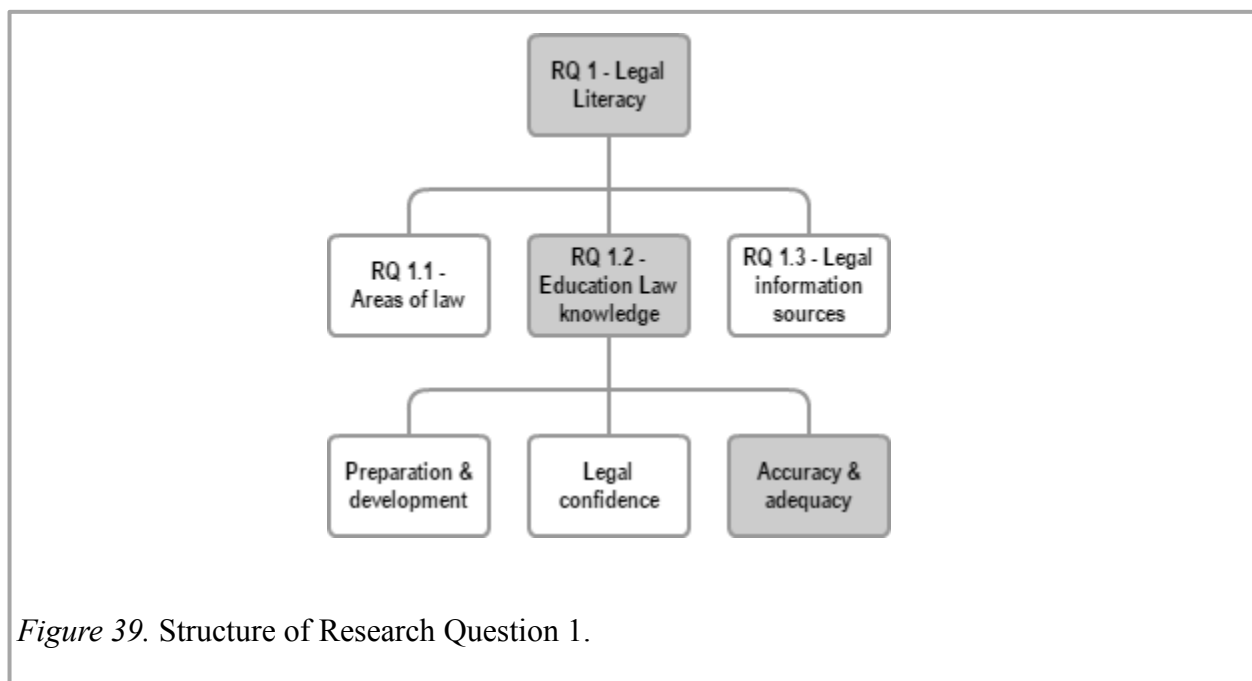
Figure 38. Structure of Research Question 1.

A cross-tabulation of data relating to the participants' demographics and legal confidence (see Appendix P) revealed that the participants who were confident in their knowledge of discrimination law had a spread of years of experience in the principalship that was similar to that of those who were not confident in their knowledge. The professed confidence and lack thereof was not focused in novitiate, middle, or senior principals but occurred across the levels of experience. In contrast, older principals professed confidence with their knowledge, whereas a lack of confidence affected principals across the range of ages. In terms of school locations throughout Tasmania the distribution patterns for legal confidence and lack of confidence were much the same, suggesting that experience, resources, and training on discrimination in schools may be relatively uniform throughout the State. This view is supported by the data on schools' proximity to cities. However, the figures regarding the participants' education sector show a considerable difference in the confidence and lack of confidence responses. Government school principals responded as 77% confident and 23% not confident; the Catholic school principals were 100% confident and none lacking confidence; and the Independent principals identified as 25% confident and 25% not confident. Thus the proportions drawn from the data have the Catholic principals as being most confident in their own knowledge (although the very small size of the sample may affect the accuracy of this observation), followed by the government and then

the Independent schools. This may reflect the challenges in providing CPD to non-systemic schools.

### **Accuracy and adequacy of legal knowledge.**

The structure of findings on this topic is shown in Figure 39. The legal knowledge of survey



participants was assessed using a series of questions relating to the Tasmanian *Anti-Discrimination Act 1988*. This general approach has been adopted in previous Australian studies (McCann, 2006; Stewart, 1996b; Trimble, 2011) as well as in overseas research (e.g., Eberwein, 2008; Findlay, 2007b; Tie, 2014) to ascertain the accuracy of school principals' legal knowledge. In the present case, participants were asked to indicate whether they thought certain statements based on disability, sex, and racial discrimination law were true or false, or if they were unsure. Four statements were listed for each area of discrimination law.

The reliability of the survey items to consistently address participants' legal knowledge was assessed using Cronbach's alpha. Information regarding this statistical test is set out in Appendix Q. This test produced an internal consistency index of 7.15, which is considered adequate for research purposes (Allen & Bennett, 2012; O'Dwyer & Bernauer, 2014). A closer examination of the Cronbach's alpha results indicated that the alpha would increase to 7.46 if item 29-2 were to be removed. That item contained a statement about the provision of a special

cultural heritage class for indigenous students, from which non-indigenous students are excluded, and whether the class would be exempt from the Tasmanian discrimination legislation. The use of the term “exempt” in this item may have proved ambiguous for participants: whether it referred to class attendance, or an exemption from the Act. Accordingly, if the survey was to be used in the future consideration should be given to amending, or deleting this item, or a substituting a different statement. For present purposes item 29-2 was omitted from further analysis of the education law knowledge items.

Table 17

*Results of Legal Knowledge Questions*

AREA OF LAW	ITEM #	STATEMENT	RIGHT ANSWER	% ANSWERED CORRECTLY
Disability discrimination	25-1	Tasmanian disability law requires schools to apply the same Disciplinary Code to all students regardless of ability or disability.	False	45%
	25-2	Under the Tasmanian law, a school that enrolls a student who is hearing-impaired must offer that student a choice between having an AUSLAN interpreter or a note-taking aide.	False	35%
	25-3	In accordance with Tasmanian law a school may require the parent of a student with a disability to deal with only one nominated member of staff, to ensure continuity and consistency.	False	50%
	25-4	The Disability Standards provide a link between the enrolling school, the student with a disability and funding support	False	31%
Sex discrimination	27-1	Under the Tasmanian law, a sexual harassment claim could be made against a male primary school student who chases a female classmate around the playground and lifts her skirt with a ruler.	False	24%
	27-2	An education employer (independent or systemic) may be liable for sexual harassment between its' employees, even if the behaviour occurs in out-	True	62%

AREA OF LAW	ITEM #	STATEMENT	RIGHT ANSWER	% ANSWERED CORRECTLY
Racial discrimination		of-school-hours and away from the workplace.		
	27-3	Schools are exempt from the provisions of the Tasmanian A-DA regarding the management of students (but not staff) who are breast-feeding or have parental responsibilities.	False	48%
	27-4	A Tasmanian school can lawfully advertise a part-time position for a male counsellor to work specifically with a group of young male refugee students.	True	24%
	29-1	Students who publicly make racially-insulting comments to each other are exempt from prosecution under the A-DA because the Constitutional right to free speech takes precedence over the Tasmanian legislation.	False	76%
	29-2	The provision of a special cultural heritage class for indigenous students, from which non-indigenous students are excluded is likely to be exempt from the race discrimination prohibitions in the A-DA.	False	31%
	29-3	Under the Tasmanian law, parents who do unpaid volunteer work in schools are entitled to the same protections from racial discrimination as school employees.	True	86%
	29-4	A school staff member who, in a lunchtime discussion with another employee refers to an indigenous colleague as “the black fella” may be liable for racial discrimination, even if the colleague did not hear the remark.	True	97%

A total of 29 participants provided a response to the 11 education law knowledge questions in the survey (item 29-2 was removed from analysis). When examined as a whole, the

responses to these questions (see Table 17) showed a mean value of 5.8 for legally-correct responses, a median value of 6.0 and a mode of 4.0. The responses supported a normal distribution with a standard deviation of 2.6, indicating that 68% of the responding participants scored between three and nine answers correct. Two of the participants (13.3%) who responded to the education law knowledge items scored zero or one correct responses. One participant responded correctly to all 11 questions.

Overall, the proportions of participants who answered the questions correctly were mixed. As shown in Figure 40, participants' responses on the racial discrimination law items (mean of 73% correct) were substantially more accurate than those with respect to both disability and sex discrimination (both having a mean of 40% correct). The lowest level of correct responses (24%) was recorded on two of the sex discrimination items: Q27-1 (about age of liability); and Q27-4 (about positive discrimination). Most correct answers related to racial discrimination questions: 86% for item 29-3 concerning protection entitlements and 97% for item 29-4 concerning insulting conduct. The average result for correct responses to the education law knowledge questions by survey participants was 53% correct.

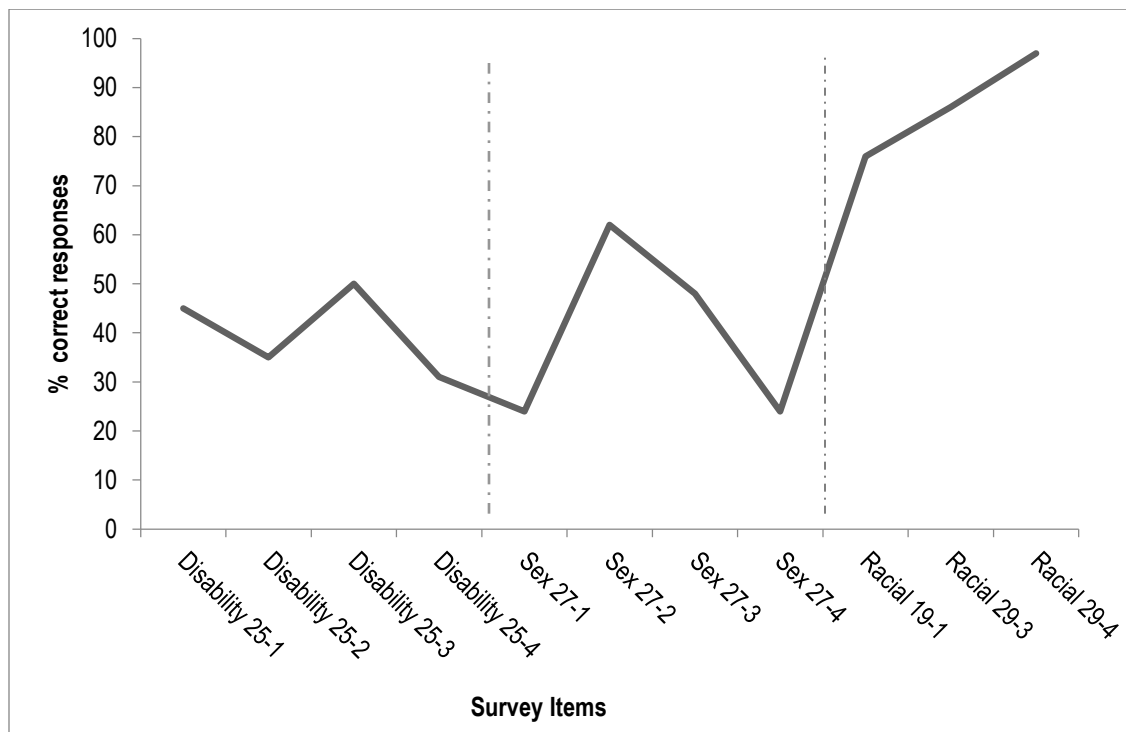


Figure 40. Proportion of correct responses on education law knowledge items.

A cross-tabulation of the correct answers on the legal knowledge questions with the participants' demographic data largely produced expected results (see Appendix R). Older and more experienced participants scored higher than their younger and less experienced colleagues. Principals in metropolitan schools scored higher than those not near Hobart (Tasmania's capital city) which also applied in terms of regions. Correct results were distributed across school sizes, with some skewing toward larger schools. The cross-tabulated data also indicated that the principals of primary schools scored higher on the knowledge questions than the other categories of schools, as did participants working in the government school sector.

The participants' legal knowledge scores were also cross-tabulated with the data concerning their tertiary legal preparation and development (see Appendix S). Again, it must be acknowledged that the data concerning participants who had undertaken tertiary legal study were based on very small numbers (four participants in total), such that caution is required for any conclusions drawn. When the knowledge item responses were cross-tabulated against the participants' tertiary legal study the data revealed that the participants who had undertaken some university-based legal training did not score highly, with a mean score of 35% of responses correct. This is likely the result of the study having been completed in a different legal jurisdiction, either in Australia or overseas. The participants' legal knowledge responses and their legal CPD were also cross-tabulated (see Appendix S). That data showed a mean measure of 74% of participants who provided a legally-correct response on the knowledge questions had received some CPD training on legal matters. This does not of course establish any statistical correlation, but is a matter of interest.

***Summary — Research Question 1.2 Level of legal knowledge.***

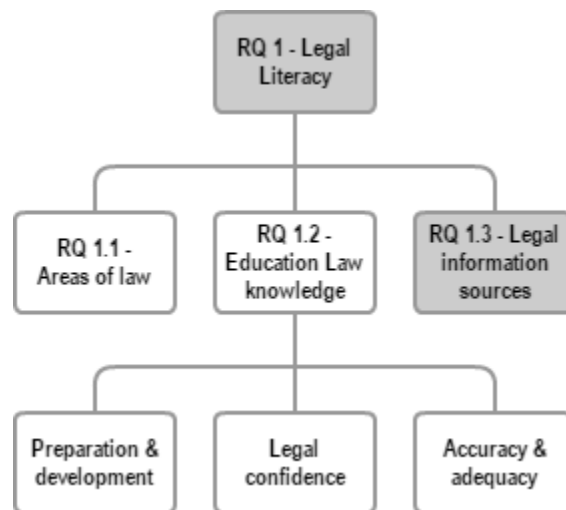
A summary of the quantitative findings regarding the participants' level of legal knowledge is at Figure 41.

The survey data concerning participants' level of legal knowledge fell into three categories. These categories related to participants' legal preparation and development, confidence in their personal level of legal knowledge, and the accuracy and adequacy of their knowledge. The data revealed few participants had undertaken tertiary legal training, gained outside the jurisdiction. Most participants had attended legal CPD in the previous year, which largely focused on safety and welfare issues relating to students and their families, staff and the school community. Almost half of the older participants had not undertaken legal CPD in the previous 12 months. Regarding legal confidence, nearly 60% of participants reported confidence in their own legal knowledge, even though the average level of correct responses on the legal knowledge questions in the survey was 53%. That result fell short of the widely accepted proficiency level of 70%. Older and more experienced participants, in larger, metropolitan, and government schools achieved better results on the legal knowledge questions than did other participants. The few participants with tertiary legal training did not do well on the knowledge questions, perhaps due to the location and focus of their studies.

*Figure 41.* Summary of Research Sub-question 1.2

### **Research Question 1.3 – Sources of Education Law Information.**

The structure of discussion on this topic is shown in Figure 42. The first research question for



*Figure 42.* Structure of Research Question 1.



this study asks “What is the legal literacy of Tasmanian school principals?” and the third sub-question directed toward answering that overarching enquiry is Research Sub-question 1.3 – “What sources of legal information and advice do Tasmanian school principals consult?”

To reflect the findings of previous research on Tasmanian school principals and education law (Trimble, 2011), the survey items related to this sub-question differentiated between sources of education law information used by participants to deal with routine and non-routine legal issues. The two terms were explained to participants in this way:

- *Routine Legal Issues.* These are day-to-day, legally-related issues that require you to make a standard decision or response.
- *Non-routine Legal Issues.* These are legal issues that are out-of-the-ordinary, especially urgent or have the potential for serious consequences.

Participants were asked if they had dealt with routine/ non-routine legal issues in the previous year, the sources of education law information that they consulted, and the usefulness of those sources.

### **Routine legal matters.**

Eighty-five percent of the survey participants indicated that they had dealt with routine legal matters during the previous 12 months of their principalship. Those participants were then asked about the sources of education law information they consulted, and the usefulness of those sources. The survey offered a choice of 11 different sources of information about education law drawn from the Australian literature (McCann, 2006; Stewart, 1996b; Trimble, 2011), as well as an open “Other” option. Multiple selections were allowed. The participants’ responses to this question are shown in Figure 43.

The data presented as three clusters of responses. The information sources consulted by most participants were lawyers (Departmental, systemic or school-employed), followed by law manuals and guidelines (again, Departmental, systemic or school-developed), and the participants’ own legal knowledge. A lower proportion of participants indicated that they consulted their school leader colleagues, non-legal staff (Departmental, systemic or school-based) and professional associations and unions. The lowest level of consultation was with CPD materials, the ANZELA journal, and the Australian Independent Schools organisation (AIS),

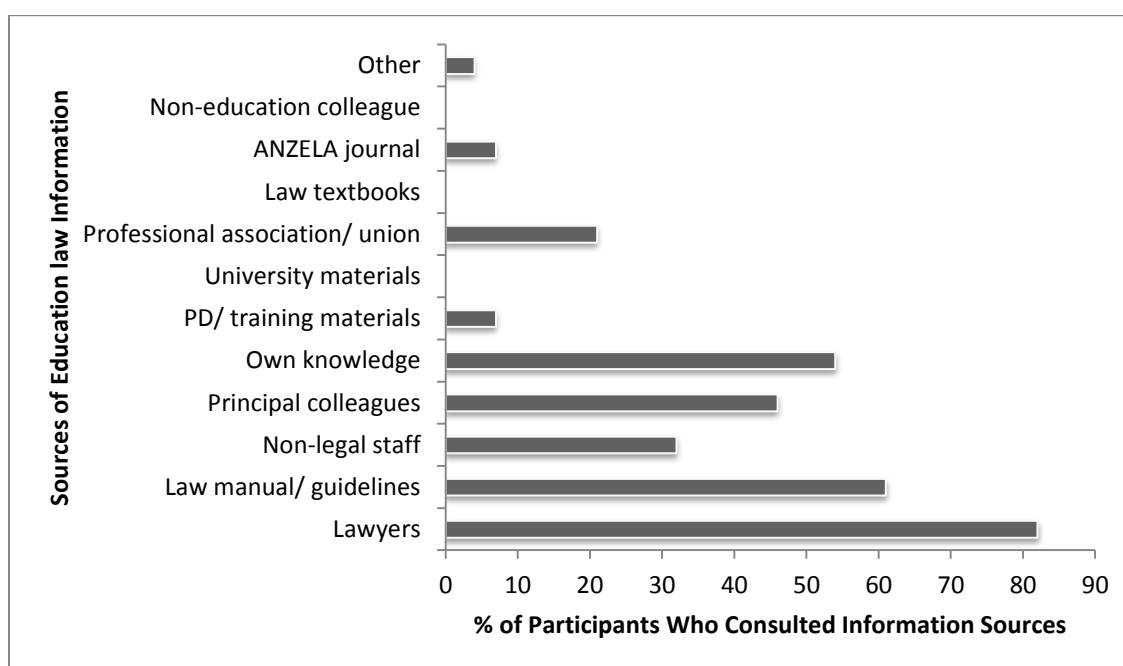


Figure 43. Education law sources consulted by participants on routine legal matters.

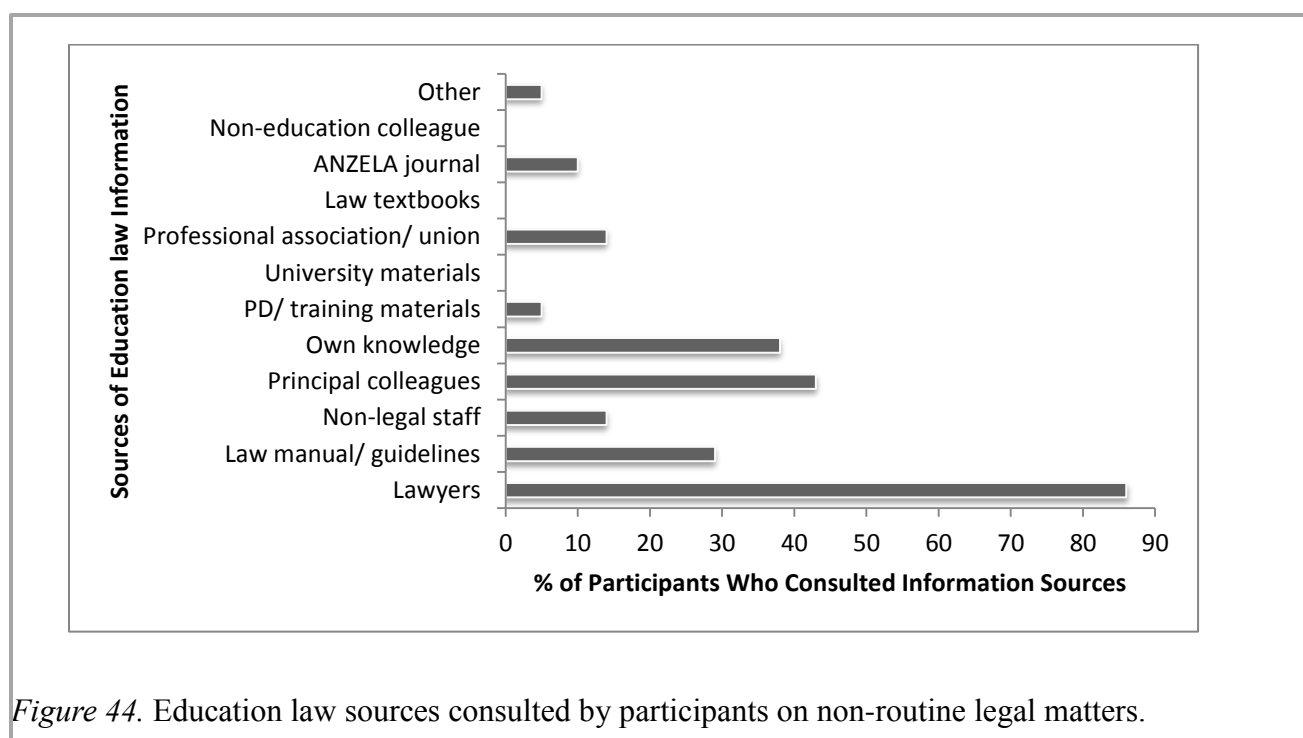
(a co-operative body supporting Independent schools). None of the participants indicated that they had sourced education law information from university materials, law text books, or from colleagues outside the education sphere.

Although the participants identified a wide and diverse range of legal supports they consulted when dealing with routine legal problems, their assessment of the usefulness of such resources produced a more targeted data picture. Three-quarters of the participants who had dealt with routine legal matters found lawyers to be a useful source of education law information, followed at some distance by a law manual or guidelines (useful to 39% of participants), the participant's own legal knowledge (32% found useful) and that of his or her fellow school leaders (rated useful by 29% of participants). The remaining sources of education law information were considered useful in dealing with routine legal problems by between negligible proportions of participants, if at all.

#### **Non-routine legal matters.**

Turning to the experiences of participants with non-routine legal matters, previously described by one Tasmanian school principal as “dramas” (Trimble, 2011, p. 56) 64% of the responding

principals indicated that they had dealt with such problems during the previous year. The legal information sources they consulted are shown in Figure 44.



These data, again, showed three very broad groupings. The highest proportion of participants (86%) consulted lawyers about their non-routine legal problems, which value was twice as large as the next following source. A lower proportion of participants sought information from other school leaders (43%), relied on their own knowledge (38%), or used a law manual or policy guidelines (29%). A smaller proportion again consulted non-legal staff, a professional association or union (14%), the ANZELA journal (10%), CPD materials or AIS (5%), with none looking to university materials, law textbooks or non-education colleagues.

When participants were asked to nominate the information sources they found most useful in dealing with non-routine legal problems, 80% indicated that they found the information supplied by lawyers to be useful. The responses for all other information sources were low: 15% found colleague principals' advice to be useful; 10% indicated the usefulness of non-legal staff, their own knowledge and a professional association or union; 5% cent selected a law manual or guidelines, the ANZELA journal and AIS; and none of the participants identified CPD, training

or university materials, education law textbooks or non-education colleagues as being useful in dealing with non-routine legal problems.

***Summary — Research Question 1.3 Sources of legal information.***

A summary of the quantitative findings regarding principals' sources of legal information is at Figure 45.

The data on sources of legal information consulted by participants related to routine, and non-routine, legal issues. For routine legal matters, the highest reported sources were lawyers, law manuals and policies, and the participant's personal knowledge, closely followed by advice from colleague principals. Participants judged the utility of such sources in the same order. For non-routine problems, participants gave greater emphasis to lawyers' advice, followed at some distance by that of colleagues, personal knowledge, and law manuals and policies. Participants judged lawyers as by far the most useful information source.

*Figure 45. Summary of Research Question 1.3*

## **Chapter 5 Overview and Chapter 6**

This chapter discussed quantitative findings in relation to Research Question 1 — *What is the legal literacy of Tasmanian school principals?* In particular it examined the areas of law participants had deal with, the level of their legal knowledge, and the sources of legal information they consulted. In terms of the areas of law participants had dealt with during their principalships the data revealed a wide and diverse range of legal topics, all of which are accompanied by a heavy informational burden. The topic of the legal knowledge of participants covered a number of related issues concerning participants' legal preparation and development, confidence in their personal level of legal knowledge, and the accuracy and adequacy of their knowledge. As to legal preparation and training, the data clearly showed that the majority of participants had undertaken legal CPD in the previous 12 months, although most did not have tertiary legal training. Most principals who participated in the survey were confident about their personal knowledge of the law, even though the results they achieved on legal knowledge questions in the survey did not meet the accepted proficiency standard. The responses concerning

information sources consulted by participants on legal issues varied somewhat between routine and non-routine issues, although the data revealed generally an overwhelming reliance on lawyers and legally-prepared guides together with participants' taking their own counsel and that of their colleagues.

The discussion now moves, in Chapter 6, to the equivalent, qualitative findings concerning principals' legal literacy. It is presented in terms of the areas of law Tasmanian principals deal with, the level of their legal knowledge, and the sources of legal information they consult.

## Chapter 6

### Research Question 1: Qualitative Findings

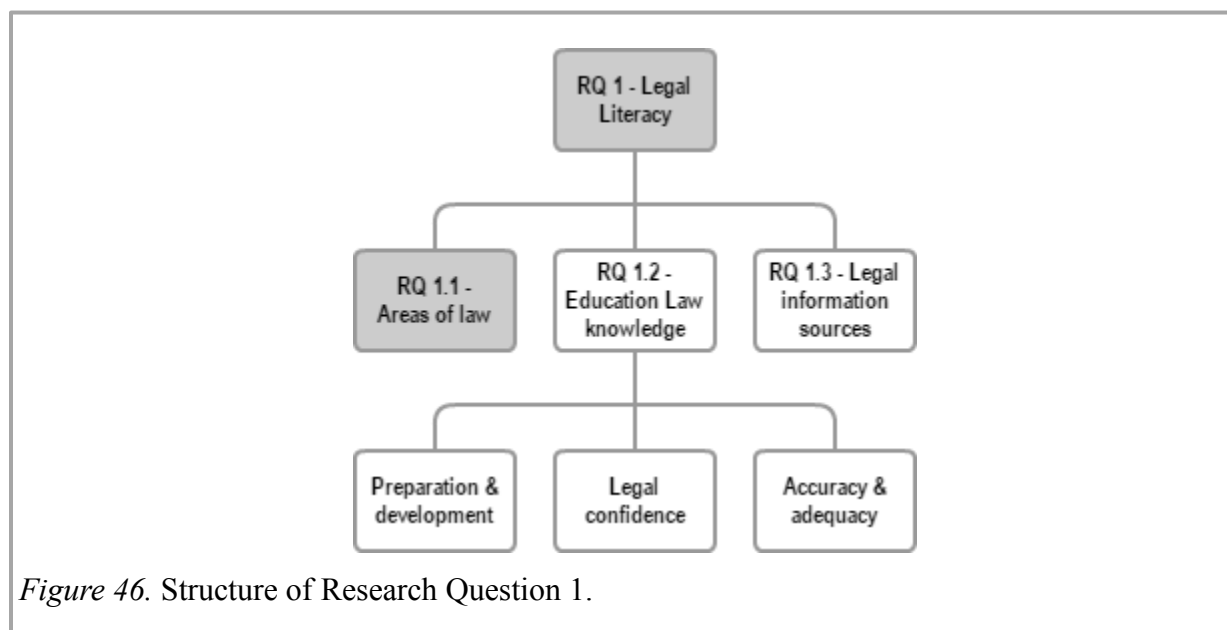
#### Introduction

This chapter sets out the qualitative findings in relation to Research Question 1 of the study: *What is the legal literacy of Tasmanian school principals?* The chapter addresses the following sub-questions:

- areas of law dealt with (Research Sub-question 1.1);
- level of legal knowledge (Research Sub-question 1.2); and
- sources of legal information (Research Sub-question 1.3).

It should be recalled that the participants in the interview phase of the study (Tasmanian school principals, principal network leaders, senior system leaders, administrators and an education lawyer) were largely independent of the sample of Tasmanian school principals who responded to the on-line survey. A list of the interview participants is set out in Appendix K. The survey participants who provided qualitative comments as part of their responses were anonymous.

#### Research Question 1.1 — Areas of Law Dealt With



The structure of this discussion is set out in Figure 46. Research question 1 for this study concerned the legal literacy of Tasmanian school principals and the first sub-question that

addressed that topic examined the legal areas participants dealt with. Qualitative data concerning this topic was obtained from interviews. Data from the on-line survey did not address this topic.

### **Legal topics dealt with by participants.**

All interview participants referred to areas of education law with which principals have dealings, ranging from the child bitten by a farm animal (Principal Clark personal communication, September 8, 2015) to the operation of charities (Administrator Taylor, personal communication, November 10, 2015). Several participants also expressly recognised that the list of legal areas relevant to schools (and principals) had increased during their professional careers. System Leader Judy observed:

If I think back 10 or 15 years ago, our principals and our leaders didn't have to be as savvy in this space – didn't have to be nearly so savvy. They didn't have to deal with these areas [of law]. But we do now, so I suppose we have kept pace. We have to keep pace, because things continue to move and shift as well. (Personal communication, June 24, 2014)

A similar feeling was expressed by Principal Logan, who noted that when he was first appointed as an acting principal in 1968, "Perhaps there weren't as many issues then, I don't know: I guess in more recent years I've dealt with a lot more." (Personal communication, September 10, 2015)

Table 18 sets out the legal topics identified by participants. The greatest majority of participants referred to areas of law with most impact on the safety and welfare of students and families, and school staff: duty of care issues (negligent injury and supervision); Family law; child welfare issues; as well as employment issues (including workers' compensation, occupational health and safety, teacher registration and workplace relations). Although not represented to the same extent criminal law may be grouped with the safety and welfare topics insofar as it includes matters such as illegal drugs, assault, theft, property damage, and search and seizure powers. The situation was well summarised by Principal Chris who observed, "I have a sense of far greater responsibility to ensure protection, which can be defined in multitudes of ways. So physical safety is paramount, but there's mental and emotional safety as well, and then there's professional protection for teachers." (Personal communication, June 13, 2014)

## EDUCATION LAW, SCHOOLS, AND SCHOOL PRINCIPALS

Table 18.

*Legal Areas Discussed by Interview Participants*

	Education issues	Criminal law	Employment	Duty of care	Family law issues	Child welfare	Social security	Immigration	Discrimination	Privacy & FOI	Copyright law	Fundraising	Defamation law	Other areas
Principal Ainsley	X		X	X					X					
Principal Bailey			X	X					X					
Principal Chris	X		X	X	X	X			X					Teacher registration, performance
Principal Drew	X		X	X	X	X			X					
Legal Officer Elliott			X	X	X	X			X	X				
System Leader Judy	X	X		X	X	X								Medication administration, use of volunteers, IT, social media, students with mental illnesses, cyberbullying & bullying
Principal Network Leader Frances		X	X	X	X				X					Teacher performance, violent students, transporting students, students smoking
System Leader Gabriel					X	X								
Principal Network			X	X	X	X			X	X				Students with disordered behaviour



	Education issues	Criminal law	Employment	Duty of care	Family law issues	Child welfare	Social security	Immigration	Discrimination	Privacy & FOI	Copyright law	Fundraising	Defamation law	Other areas
Leader Harper														
System Leader Judy		X	X	X		X							X	Use of social media by staff
Principal Network Leader Deb		X	X	X	X	X				X				IT, personal liability
Principal Jordan		X		X	X	X				X				
Principal Kelsey		X	X	X	X				X				X	Complaints, social media, administrative law, professional conduct
Principal Clark	X	X	X	X	X	X								Debt management
Principal Logan		X	X	X	X	X				X				Medication administration
Principal Morgan				X		X								Complaints
Principal Perry	X	X			X	X			X					
Principal Kelly	X		X		X									Performance management
System Leader Cameron			X	X	X									
Principal Quinn	X		X	X		X			X					School registration

	Education issues	Criminal law	Employment	Duty of care	Family law issues	Child welfare	Social security	Immigration	Discrimination	Privacy & FOI	Copyright law	Fundraising	Defamation law	Other areas
Administrator Roger			X	X	X				X	X				Contracts, social media
Administrator Taylor	X			X					X					Schools registration, charitable status, childcare, working with children
Principal Sydney	X		X	X		X								Preschool, out of hours care, use of volunteers, TASC obligations, school registration, company directors obligations
System Leader Trevor			X	X	X					X				
Administrator Whitney	X	X	X	X	X	X							X	Social media, bullying

## EDUCATION LAW, SCHOOLS, AND SCHOOL PRINCIPALS

A smaller number of participants discussed the impact of discrimination and privacy/FOI issues on their work. Fewer again commented on the industry-specific provisions contained, at that time, within the *Education Act 1994* (Tas). The topic of defamation law was raised by the smallest number of participants, and the issues of social security law, immigration, copyright and fundraising were not discussed by any of the participants interviewed.

Many of the additional specific topics noted in Table 18 as ‘Other areas’ were examples of the more general categories, for example, the administration of medication would be an issue of duty of care and criminal law. Legal requirements regarding Information Technology use are addressed in the criminal law, and teacher performance is a matter for employment law. They have been included separately to provide a more fine-grained understanding of the legal issues faced by Tasmanian school principals.

### Frequency of legal dealings.

Regarding the frequency of legal issues arising in schools, the interview data showed very broad agreement between participants. For example, System Leader Gabriel, from the government system, reported that Family law created one of the heaviest legal burdens at school level (Personal communication, June 24, 2014). That perception was echoed by System Leader Cameron from the Catholic education sector, who noted that:

The big ticket ones in schools are Family law; it certainly has a significant impact on a school, including our schools . . . . The one that presses on them most, and the one they get most anxious about, is Family law, issues in and around court orders. (Personal communication, October 5, 2015)

The interview transcripts contained many references to the demands made on school principals by Family law matters. Examples are set out in Table 19. The data suggest that schools and school principals are involved across the spectrum of Family law issues.

Table 19.

*Family Law Issues with which Principals are Reported to have had Dealings.*

Participant	Family law issue	Quote
Principal Clark	Getting separated parents to sign enrolment forms	There’s often difficulties around situations where one of the parents may have decided to enrol the child in our school, and the other parent may not be happy with it for whatever reason. So with enrolment forms, both parents

Participant	Family law issue	Quote
		are supposed to sign off on it.
Principal Trevor	Suggesting parents seek advice on Orders	I think the main role a principal has is to advise people to go and get legal advice, and you can explain to parents the legal parameters you operate under . . . I had to say to the Mum “I’m powerless, because we can only be governed by papers put in front of us. If you can put some papers in front [of me] giving you custody then we can take appropriate action”.
Principal Perry	Lawyers requiring to interview students	We have either lawyers coming in to the school, or they make contact with us, as representatives of the children; so they will come and ask permission to interview the children.
Principal Kelly	Provision of information to Family Court	It’s usually in relation to Family law matters, so, our obligation to provide information to the Family law courts.
Principal Jordan	Attendance at Family Court to give evidence	I’ve had dealings with legal issues where, in my career, where I’ve had to go to court over things, to do with custody issues.
Administrator Roger	Need to understand Family Court Orders	It’s about communicating that really well, but also understanding it: What is shared contact? What is no contact? What’s a Violence Order? It’s all that sort of stuff.
System Leader Judy	Family law details required by schools	They’ve absolutely got to know who’s got custody, who hasn’t, who’s allowed to do what, who has to have copies of the school report, where the permissions go, which child’s going to which home on particular nights of the week. You have to make sure they’re up on that.
Principal Logan	Communication of information	It’s just making sure that your staff totally know. And so, for the one where Dad wasn’t allowed within a hundred metres, we had to make sure that the staff, and any staff who might be working with the boy, knew exactly what Dad looks like. We had to get Mum to bring in a photo of the estranged father, and we had to have a plan: if he comes, what do we do?
Principal Network Leader	Demands by parents in breach of Family Court Orders	Lots of child custody issues. So, things like non-custodial parents wanting information, non-custodial parents wanting access to visit children at the school.

Participant	Family law issue	Quote
Harper		Lots of stuff around relationships, custody of children.
Principal Network Leader Frances	School as the arena for custodial changeovers	Where schools get caught . . . where there's a changeover between families. Might be on a Wednesday afternoon – on that day one family drops them off and another picks them up. Often that happens at school, and that can lead to tensions in school when different families meet. Also it can lead to misunderstandings, to arguments about whose day it is to pick up the child, where. Sometimes families will expect schools to sort that out.
Principal Clark	Parental child abduction	We received from our Head Office any missing children or children that are cases of custodial stuff. I received an e-mail about a particular child . . . . It was a girl and lights came up, and I had some suspicions when enrolment took place . . . They put me in touch with the Federal Police . . . said they were going to be there in half an hour: "We're coming to pick this child up." [The child was collected from the school by the Federal Police and immediately flown back to her father in Sydney]. . . Mum had taken her here, against some custodial orders . . . . By three o'clock Mum comes to pick up her daughter. Daughter's not there. She came straight to me; she was completely irrational, as you can well imagine.

### Legal CPD.

The interview data contained a limited amount of information concerning the legal preparation and development of Tasmanian principals, although responses interestingly highlighted the reliance of school leaders on study and training beyond, as well as within, the strict limits of the principalship. Principal Morgan reported that her fund of legal knowledge was based on information gleaned during her teacher training, "I do think there's probably a lot of us working in the dark, and all I can really refer back to is those times, my university training." (Personal communication, September 21, 2015) In contrast, Principal Kelly suggested that he relied on his experiences as a teacher to guide his legal actions, "As a teacher, if your principal has been providing you with the background, you come in with 'OK, this sounds like when this happened at school when I was a teacher' and they can draw on that." (Personal communication,

September 24, 2015) Principal Clark was the only participant who mentioned higher degree tertiary study, but noted that her experience as a school principal was more beneficial in terms of legal knowledge:

Even in the Masters course, it was Educational Leadership, so it was more around how you lead, not necessarily the semantics or practicalities of law. So most of it's been done through the course of being a principal, and then some extra courses I've done in that process. (Personal communication, September 8, 2015)

Further, one participant referred to the influence of “non-school” agents on her legal understandings, “Outside of the school context my knowledge and understanding would be about the same as everybody else, from watching shows on TV and documentaries and that sort of stuff.” (Principal Deb, personal communication, August 24, 2015)

When queried about her legal background, Principal Clark's response was succinct, “Something I wasn't trained for. Something I've had to learn on the job” (Personal communication, September 8, 2015). That feeling was echoed by other participants. Much of this on-the-job learning, at least for government and Catholic school principals, seemed to rest on their becoming familiar with systemic policies and documents. The suggestion was made by Principal Perry, a government school leader in her fifth year as a principal, that:

[T]here are a lot more policies and documents that have got written and sent out. So, it's very much I suppose those procedures and policies that tell us the laws of education in a sense, and what our accountability is . . . . You learn it as you go. (Personal communication, September 22, 2015)

Principal Kelly, another government school principal of many years standing, expressed a similar view, “I think, as I've had many years' experience, most of that stuff has come via policies, handbooks – that sort of training.” (Personal communication, September 24, 2015)

In relation to legal CPD for principals, the relevant data were largely provided by Independent school principals and administrators. The representation of Independent principals on this topic may be explained in part by the governance arrangements of Independent schools in which Board members, including principals, are deemed to be corporate directors and subject to the corporations' legislation. The governance training was well described by Principal Sydney:

. . . I'm, in law, a director, and directors these days have significant responsibilities . . . the areas of Industrial Relations, Health and Safety etc. etc. Every member of our Board

and every new member that comes on qualifies in the AICD [Australian Institute of Company Directors] governance course. (Personal communication, November 11, 2015)

Participants observed that the education law CPD they attended was linked to an identified need: new or altered legal obligations; a general lack of knowledge amongst principals; or weakness in a particular individual's jurisdictional knowledge. A need for CPD regarding new legal obligations was highlighted by several participants. Administrator Roger explained that,

. . . the introduction of the new Work Health Safety legislation. Suddenly, they [school principals] were found to be a Responsible Person — there were no ifs and buts. There were very big dollars bandied about . . . . You know “Let’s talk to you about the Board member in Brisbane who lost his house.” (Personal communication, November 10, 2015)

A similar description was given by Principal Ainsley concerning the *Work, Health and Safety Act 2012* (Tas), “Let’s train you in this, you know. Workplace Health and Safety is a huge one – if you don’t do this, then that will happen to you.” (Personal communication, June 3, 2014) Along the same lines, Principal Kelsey, a Catholic school leader, observed that CPD was provided following the adoption of a new Industrial Agreement:

They see, for example, the current Award’s new, so there are a lot of questions about ‘What does it mean?’ So what they’re starting to do is to provide more briefing notes, and more opportunities to actually talk to HR, based on these requirements. (Personal communication, September 7, 2015)

Some participants also reported that, where schools were systemic or even loosely associated education law CPD topics may depend on needs identified across a number of schools. Principal Kelsey noted that:

For example, issues are arising about discrimination: Are schools differentiating and making appropriate accommodations for children with needs? If they’re starting to have issues like that, then they’ll think “OK. This is an area where we see a number of principals, a number of schools are starting to have difficulty. We need to address this before it becomes a larger issue.” (Personal communication, September 7, 2015)

Further, an individual principal may identify an area of his or her knowledge which may benefit from additional CPD learning, as was reported by Principal Sydney in relation to the company director’s governance course for Board members and senior staff. A somewhat similar example

was described by Principal Bailey, whose education law qualifications were obtained in another jurisdiction:

Professional development that the school, the Board of Governors, has determined that it may be helpful for me, especially with regard to risk management and risk issues . . . it was deemed very important for me to be across those laws [*Workplace Health and Safety Act 2012* (Tas)] and have a full understanding of workplace health and safety issues.  
(Personal communication, June 4, 2014)

***Summary – Research Question 1.1 Areas of law dealt with by principals.***

A summary of the qualitative findings regarding areas of law dealt with by school principals is at Figure 47.

The qualitative findings regarding areas of law, concerned legal topics dealt with by interview participants, the challenging issues participants dealt with in schools, and the legal preparation and development undertaken by principals. Participants discussed a broad, varied, and extensive list of legal areas, and suggested the range of matters had increased in recent years. Participants from all three schooling sectors agreed that Family law in schools is the most challenging legal issue they face. In describing their legal preparation and development, participants referred to experiences beyond the traditional framework of education postgraduate qualifications and CPD. These included pre-service teacher training, teaching experience, company law qualifications, and on-the-job learning as a principal.

*Figure 47. Summary of Research Question 1.1*

**Research Question 1.2 — Level of Education Law Knowledge**

The first research question for this study asked, “What is the legal literacy of Tasmanian school principals?” and the second sub-question directed toward answering that overarching query is Research Question 1.2, “What level of legal knowledge do Tasmanian principals hold?” The qualitative data in respect of this topic were collected from the written comments submitted for the on-line survey, as well as from participant interviews. The structure of the findings on this topic is set out in Figure 48.



### Written comments from survey data.

Participants were invited to explain the causes of any dissatisfaction with their own legal knowledge. Their responses produced an informative picture of challenges faced by principals in dealing with legal issues. The starting point for the comments was the school principal having to deal with a legal issue without the benefit of legal advice, “Dissatisfaction arises when I am unable to get a prompt response from . . . . I am then concerned that if I act promptly my action may not be the most appropriate under the circumstances”. The comments then addressed concerns that participants’ legal knowledge may be insufficient, “Simply do not

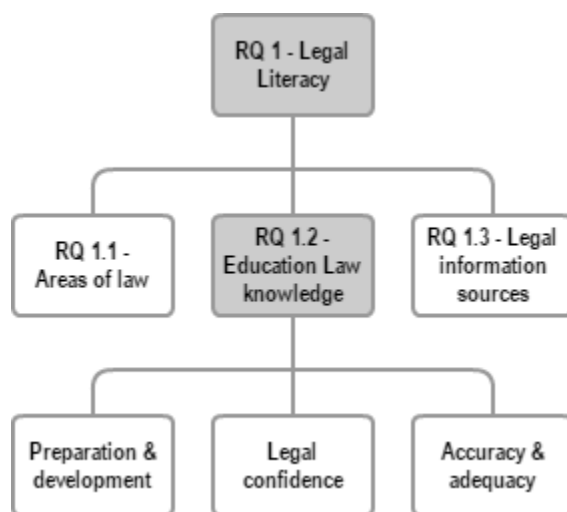


Figure 48. Structure of Research Question 1.

know the law in depth”, “Too much to remember”, and “It is impossible to keep everything in your head or even readily available regarding legal knowledge”. A closely related issue was that legal CPD is often reactive rather than proactive, “Usually only after an issue ‘blows up’”. The responses then went on to outline other difficulties in dealing with a legal issue. One issue raised by participants was time pressures: “It takes too much time to go and find out. It would be better to just know”; “This can take huge amounts of time”; and “We have so many other things to do it is hard to stay on top of it all”. Participants also referred to the complexity of legal information, “The law is complex. We often think we understand what it means then discover it is not that straightforward. Getting the law in plain language is not easy”. Survey participants also pointed out that legislative requirements are subject to continual change: “Keeping up to date in a

changing regulatory environment is always a challenge”; “The rules seem to change frequently”; and “The [legal] landscape is changing rapidly.”

### **Interview data.**

The interview phase revealed interesting data concerning participants’ perceptions about the adequacy of principals’ legal knowledge, as well as the level of knowledge that should be expected across the profession. While these data reflected a range of standpoints about school leaders’ legal knowledge, there was foundational consensus that school leaders should know something about education law, “for their own protection, as well as for the protection of everyone in the school” (System Leader Judy, personal communication, June 24, 2014).

### ***Adequacy of personal legal knowledge.***

In terms of participants’ characterisation of their personal legal knowledge, the continuum of responses could not be wider. Principal Quinn, a young, early-career principal, reported very candidly:

If I were to say ‘Have I received formal training in education law in regard to those aspects, and would I know which aspect of law to go to if I wanted clarification, apart from dipping a fishing rod in the ocean of Google?’ [No] I wouldn’t know where to start. (Personal communication, October 14, 2015)

A similar self-assessment was made by Principal Ainsley, a school leader with 10 years’ principalship experience, who suggested she, “Could have been more informed . . . . Very little is the simple answer. Very little in the way of preparation. . . . I’m rattled to see there are so many areas in which I’m definitely under-educated.” (Personal communication, June 3, 2014) At the other extreme were participants who considered their knowledge of education law to be more than adequate. Principal Kelly noted, “As someone who has a fair bit of experience, I’m pretty well over most things” (Personal communication, September 24, 2015), while Principal Logan stated, “I don’t need to have anything else in my head around that . . . . I have found I know as much as I needed to know . . . . I don’t believe I needed to know more.” (Personal communication, September 10, 2015)

Several interview participants expressed an opinion that it was not necessary for school principals to have a comprehensive knowledge of education law, although the basis for their views varied somewhat. Some participants argued that they do not require a full understanding of every aspect of education law because they are specialists in education, not the law (Principals

Cameron and Kelly, and Principal Network Leader Deb, personal communications, October 5; September 24; and August 24, 2015). Others pointed out that expert legal knowledge is unnecessary because principals can obtain legal advice as required (System Leaders Jersey and Trevor, personal communications, August 20 and November 11, 2015), which presupposes access to a lawyer.

***Level of legal knowledge required generally.***

In describing the level of legal knowledge required generally by school principals, participants approached the issue from several different directions. Several took the view, expressed by System Leader Judy, that the principalship is, “A hugely responsible job” (Personal communication, June 24, 2014). Given the amount of legal responsibilities vested in a school leader, Principal Perry argued that “Somehow we do need to know what’s the breadth of our legal responsibilities as far as running a school.” (Personal communication, September 22, 2015) Similarly, System Leader Deb acknowledged that “There’s a level of knowledge, of course, that principals have to have, about what their legal obligations are, and their roles and responsibilities, and what their boundaries are.” (Personal communication, August 24, 2015) Other participants suggested that school principals should know enough about education law to enable them to deal with straightforward routine legal issues that arise in their schools on a daily basis, seeking advice on all other legal matters. Principal Jordan noted that, “if it was something that was presented every day and I had issues with it, then I would be fully cognisant of the law.” (Personal communication, August 28, 2015)

***Summary— Research Question 1.2 Level of legal knowledge.***

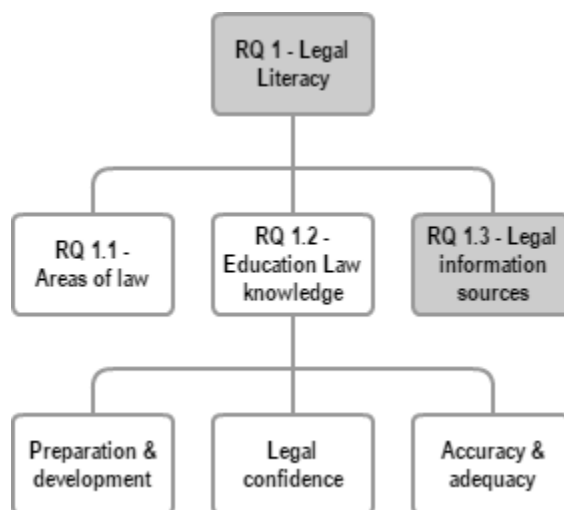
A summary of the qualitative findings regarding principals’ levels of legal knowledge is at Figure 49.

Survey data described principals' dissatisfaction with their legal knowledge, including: needing to rely on an adviser when their knowledge was inadequate; and difficulties in becoming familiar with legal information (complexity, time, volume, language, change). The interview data were more wide-ranging. There was consensus that school principals do require an amount of legal knowledge. Participants positioned themselves on a continuum of legal capacity from young and inexperienced with little or no training, to very experienced and uninterested in more training. Concerning the level of legal knowledge required, views spread across a range from suggesting that lawyers should deal with legal problems, to wanting to know the extent of the principal's legal rights and responsibilities.

*Figure 49.* Summary of Research Question 1.2

### **Research Question 1.3 — Sources of Education Law information**

The first research question for this study asks “What is the legal literacy of Tasmanian school principals?” and the third sub-question directed toward answering that overarching query is Research Question 1.3, “What sources of legal information and advice do Tasmanian principals consult?” Data concerning this topic were collected from written comments submitted to open survey questions, and from the interviews. The structure of discussion on this topic is shown in Figure 50.



*Figure 50.* Structure of Research Question 1.

### **Written survey data.**

The survey invited participating principals to comment on the usefulness of information sources for dealing with routine and non-routine legal matters. Several school leaders provided their insights.

#### ***Usefulness of routine legal information sources.***

Participants identified several characteristics of both their decision support and its source. Concerning the decision support participants suggested that definitive advice was most useful; for example, “Following a guideline makes it clear what you should do. I don’t have to act on what I think is best”, and “Definitive answers”. Several participants also expressed positive comments about the clarity and accuracy of information they received, as well as the timeliness of response to their request for assistance. With regard to the source of the information, participants highlighted the adviser’s expert, specialist knowledge. Examples included, “Breadth of experience and depth of knowledge/understanding”, and, “Knowledge and expertise of the source”. This positive perception of specialist expertise was also expressly linked to the adviser’s level of relevant experience, “Experience of applying knowledge to practical circumstances in the past. Best enables response to future possibilities.” Many participants also identified the accessibility of the information source as important in comments such as, “Ease of access” and, “Lawyers were approachable”. The factor of on-going support was also raised by participants, “Back-up support was excellent”, and, “Supportive nature of key Departmental official”.

#### ***Usefulness of non-routine legal information sources.***

Comments about support for non-routine issues were generally similar to those made in respect of routine legal matters although the comments did identify some particular aspects the participants considered important. Survey participants emphasised the point that the non-routine issues were, “One offs. I don’t expect to meet either ever again” and, “Areas of unfamiliarity”. These comments underscored the participants’ need for specific, expert advice. Regarding sources of decision support, responses were divided between those who obtained advice on their problem from a lawyer and those who consulted a formal or informal body of advisers. The latter group referred to, “The benefits of collective experience”, “A wider spread of experience dealing with matters over many schools”, and, “The wisdom of a collective group”. It was not clear whether participants were referring to collegial advice provided by Department/system/ school staff, fellow school leaders or professional associations. Regardless of whether advice on non-

routine legal matters was obtained from a legal adviser or a body of persons, access was considered important.

With regard to the advice itself, participants commented on the need for, “Tailored” and, “Up-to-date” information. A number of the comments echoed the theme about, “Definitive answers”. Those comments included references to, “Clear direction to follow” and, “It left me in no doubt what I had to do”. This desire for the certainty of a clear-cut legal answer contrasts with one participant’s positive comment about, “Opportunity to talk through issue and consider options for dealing with it”. This suggested a much more active engagement by the school principal in formulating plans with their legal adviser.

***Summary – Research Question 1.3 Sources of legal information.***

A summary of qualitative findings regarding school principals’ sources of legal information is at Figure 51.

The qualitative survey data highlighted several themes common to principals’ dealings with routine and non-routine issues, including their desire for clear, accurate, and definitive advice, as well as an adviser who is knowledgeable and experienced. Participants recognised that useful legal advice can be sourced from lawyers, but that other sources may also provide support.

*Figure 51. Summary of Research Question 1.3 (Survey data)*

**Interview data.**

Many interview participants outlined sources of legal decision support they had consulted, or were available on a systemic level. There were striking similarities and differences between the legal decision supports described in the three schooling sectors.

***Government school system.***

When discussing the decision supports available to government school principals for legal problems, System Leader Trevor identified advice seeking as a fundamental issue:

The Golden Rule: seek advice. Seek advice; don’t think you have to have every answer. When something comes up like this we’ve got various experienced people, including a

Legal Section. We've got people that will help you through it; you don't have to carry it alone. (Personal communication, November 11, 2015)

Legal decision supports discussed in this section have been considered in terms of their proximity to school principals — firstly, those found within and around the school's immediate environment, followed by the supervisory management level, and finally those supports located within the DoE Head Office — as illustrated in Figure 52.

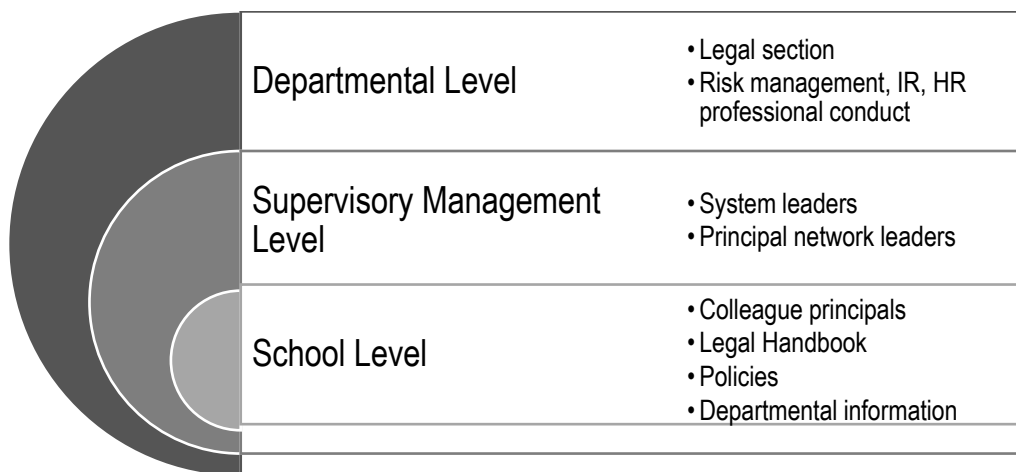


Figure 52. The levels of legal support available to government school principals.

#### *School level.*

In the course of her interview, System Leader Judy observed that the framework of legal information provided to government school principals was “Fairly relentless . . . and fairly comprehensive, so that we make sure they're really well-equipped to take on the role”. That characterisation seems not to have been over-stated. Judy went on to explain:

They have a fairly extensive induction process where we go through all the main documents that are remotely associated with legal or risk management issues or related to the Education Act. . . . The second thing is continual awareness-raising, so that we bring to the attention of our principals at Forums, plus through weekly memos, we'll feature various legal documents, just to refresh their memories . . . Checklists that principals can go through to make sure that they're compliant with standards . . . Professional learning around critical incidents . . . By most of their phones we will have the list with all the

phone numbers and processes they need to follow. (Personal communication, June 24, 2014)

From the specialised education law perspective, Legal Officer Elliott noted, “We send a message out through the Early Years of School newsletter, from DepSec Early Years. And if we want to get a message to schools about things that might have happened or be changing, that’s how we do it.” (Personal communication, June 24, 2014)

Departmental policies, guidelines and procedures (2012i) provide specific information to government school principals concerning the DoE’s position regarding legal issues and the actions required to achieve a particular result. While not all such documents relate to legal matters, many do so (see Appendix T1). The role of written departmental policies was described by System Leader Jersey:

In recent years the Department has been really strategic about getting policies up. So there’s a policy on everything: a policy on policies. . . . It’s very clear around whether they are policies or guidelines or whether they’re requirements. That’s on a portal on the Department’s website; it’s updated regularly. When it’s updated people are advised of that update . . . so that leaders in a school are aware that there’s something there, if they need to know about it. (Personal communication, August 20, 2015)

In addition to legal policies, guidelines and procedures, the DoE provides its principals with legal guidance through a Legal Issues Handbook (Department of Education (Tasmania), 2014c), prepared by the Legal Services unit. The role of the Handbook was outlined by Legal Officer Elliott:

We have a Legal Issues Handbook that’s online. . . . Whenever we have something coming up we think, “Right, let’s embed that in here” or whatever. It’s about getting the message out. We tweak the Handbook or a policy to say, “OK everybody, do this.” (Personal communication, June 24, 2014)

The formal sources of legal information do not, however, present a complete picture. A critical element of principals’ legal decision support lies in their informal interactions with fellow school leaders. Referring to her own experience, Principal Network Leader Harper reported:

There are multiple principals around, there are people that you can ring and ask . . . . You want to be a little bit independent yourself, so you ring a colleague just to check with them. I’ve certainly been in that situation. If I thought that I knew the answer and I wasn’t



really worried about it, but I just wanted to check with someone. I think that's a process that principals often use. . . . We'd use colleagues. (Personal communication, June 24, 2014)

*Supervisory management level.*

The Tasmanian DoE provides educational services across the State through two distinct organisational groups (Department of Education (Tasmania), 2015a) — Departmental Services, and Early Years and Schools (EYS). Within EYS, the supervision and management of government schools is the responsibility of Learning Services South and North, each led by a General Manager, with one or more Assistant General Managers. Principal Network Leaders are experienced former school principals who provide support to school leadership, “Principal Network Leaders provide at the shoulder support to principals to lead and manage school improvement and accountability and provide positive learning environments for all” (Department of Education (Tasmania), 2013-14, p. 8).

Several participants commented on the role of Learning Services managers, as well as Principal Network Leaders, in providing advice to school principals on legal issues. Principal Jordan noted that he would contact Learning Services staff to seek initial advice on a problem:

We work in an accountability framework, we seek advice when we're not sure; that's what I do, I certainly don't act without, when I'm unsure about something I seek advice . . . . There is a very strong support within our Learning Services areas; I think a principal who's unsure would contact them, and then they would say “Well, you need to contact Legal” or they would contact Legal for them through HR or through the General Manager. (Personal communication, August 28, 2015)

Similarly, Principal Perry suggested, “A situation will crop up here, and I'll think ‘I haven't had a situation like this happen before’. I'll email either to Learning Services, where we have a support manager who's quite skilled or I'll go straight to Legal.” (Personal communication, September 22, 2015)

*Departmental level.*

The Department Services group of the DoE provides a range of specific information assistance to government school principals (Department of Education (Tasmania), 2015a) on issues that may have legal implications, concerning: information technology, human resources, injury management, workplace relations, safety and risk management, and conduct and investigations.

That support is in addition to the legal interpretations and guidance provided by the Legal Services unit. The operation and functions of the Legal Services unit were outlined by Legal Officer Elliott (Personal communication, June 18, 2014):

We give information to schools about legal issues; we interpret court orders; a whole bunch of things. We also provide support for Learning Services [for legal training]. . . . Requests for legal advice go through Legal Services, and then we will facilitate the access. And then we will interpret that back to the school so they understand what it means . . . No there isn't [any cost to schools for legal support]. We're employed public servants; we're just here to support schools. . . . A lot of the message is simply that we're here. Email us if you have a problem. (Personal communication, June 24, 2014)

The interview data revealed two important themes concerning the interaction between school principals and the DoE Legal Services unit. The first involved the circumstances in which principals might request support from Legal Services. In Principal Network Leader Frances' view, "Probably you should seek advice when something out-of-the-ordinary happens" (Personal communication, June 24, 2014), while Principal Jordan suggested she would seek expert legal advice in situations of doubt, "I always take advice from our Legal Department if I'm not sure about something. . . . So anything where we're unsure . . . we usually contact out Legal Department to get advice." (Personal communication, August 25, 2015) The data further suggested that government school principals seek assistance from their departmental legal advisers when a decision or other action has the potential to become a *high stakes* issue, because: it falls outside standardised policy parameters, or it involves external parties. Principal Perry observed:

If there's anything that I'm a bit concerned about, particularly Court Orders, Restraining Orders, attendance procedures, lawyers ringing or sending letters and wanting to come on-site to interview or give subpoenas, I always just send a quick note down to our Legal team as part of an email. (Personal communication, September 22, 2015)

The second theme concerned principals' assessment of the standard of support provided to them by Legal Services staff. To categorise that assessment as 'satisfactory' does not do justice to the plaudits heaped on Legal Services by principals and administrators. For example, Principal Logan commented:

It's a huge safety net, and I'm happy with that. . . . It's certainly one of the aspects that they, as a system, I believe we actually do well. . . . I think it's an area where principals, from my experience, are well supported. (Personal communication, September 10, 2015)

When the interview data from government sector participants were interrogated more closely to establish the bases on which the principals' trust was founded, it became apparent that some participants closely identified the performance of the Legal Services unit with the work of a particular legal adviser, and did not distinguish between the lawyer and the advice. For example, Principal Network Leader Deb (Personal communication, August 24, 2015) spoke positively about the accessibility of legal advice for government school principals, whilst System Leader Jersey and Principal Logan (Personal communications, August 20 and September 10, 2015) praised the availability and accessibility of the legal adviser. The responses regarding the timeliness of advice were clearer; for example, Principal Jordan, Principal Network Leader Frances, and System Leader Judy (Personal communications, August 28, 2015; June 24, 2014; and August 20, 2015) reported positively about the quick response they received from Legal Services on urgent enquiries. Several participants mentioned their trust in Legal Services, which was explicitly applied to both the legal adviser and the legal advice. For example, Principal Logan commented, "There's certainly a lot of trust in the people who have that role, trust in their advice. I've never found any advice to be lacking" (Personal communication, September 10, 2015).

Notwithstanding the positive views expressed by participants, it was important that "outlier data" (Clark, 1989, p. 31) should also be acknowledged and considered, to promote the validity and reliability of qualitative results (Merriam, 2009; Roller & Lavrakas, 2015). To do so, data from three different sources were addressed: a Coroner's report of findings into the death of a Tasmanian school student in 2009 (*Levi, R. (2012) TASCD 92*); an interview conducted with an administrator from a Tasmanian educational professional association (Personal communication, December 8, 2015); and a media report of the Tasmanian Legislative Council Budget Estimates Hearing (Bird, 2015).

The Coroner's Report into the 2009 drowning death of a Tasmanian public high school student (*Levi, R. (2012) TASCD 92*) determined that the school principal did not have a full understanding of the *Outdoor Education Guidelines*, particularly the requirements for excursions involving inherent risk activities, and that he was only one of many government school leaders

with this deficit (para. 76). Further, the Coroner was satisfied that “The department failed to ensure that the principal and staff . . . fully understood the Guidelines” (paras. 74–75). It is acknowledged that the Coroner’s views were based on arrangements some five or more years ago and the data collected for this study suggested that those criticisms had been acted on. The *Guidelines* were reviewed and were replaced by the *Procedures for Planning Off-campus Activities* (2014d), and training for principals in risk management was increased (Gallasch, 2012). As noted by System Leader Judy, “In the last couple of years we’ve really upped the ante on the Guidelines available; we’ve updated things like the Outdoor Education guidelines.” (Personal communication, June 23, 2014)

Secondly, Administrator Whitney argued that Tasmanian Government system educators were beginning to feel isolated from the DoE as a consequence of budgetary constraints:

People feel unsupported. . . . Right now, for example, the central bureaucracy of the Department of Education has been pared back and pared back in eight successive Budgets, so there’s really nothing left to cut. . . . Without a high-functioning bureaucracy our schools won’t function well; they’ll go on, but things will erode, break down. The levels of support will decline. (Personal communication, December 8, 2015)

While Administrator Whitney outlined the possibility of government principals being left “hanging out to dry” (Personal communication, December 8, 2015), some six months earlier an unnamed government school principal’s letter was read out during the Tasmanian Legislative Council’s Budget Estimates (Bird, 2015). In that letter the correspondent asserted that it could take days to get legal advice, “When I had a crisis and needed quick advice I rang four senior people and couldn’t get anyone” (Bird, 2015, p. 7). Attempts to contact the correspondent for an interview were unsuccessful.

### ***Summary — Research Question 1.3 Sources of legal information.***

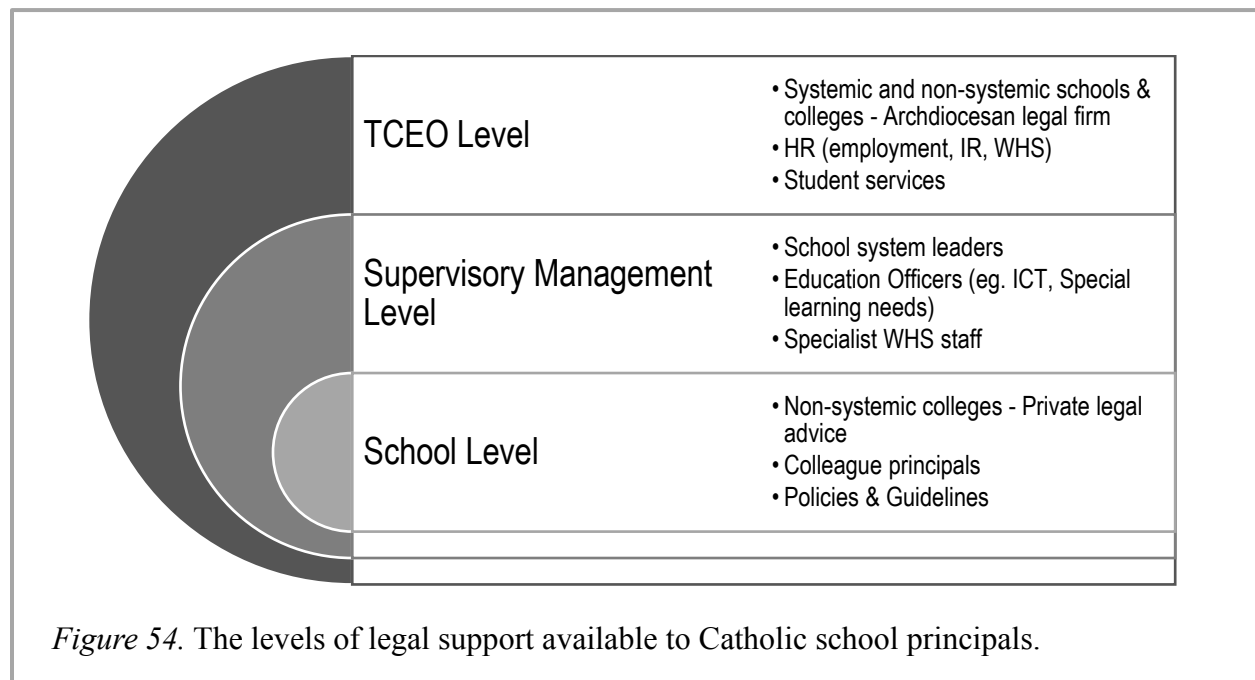
A summary of qualitative findings regarding sources of legal information for government school principals is at Figure 53.

The data revealed three levels of support for government school principals. At the school level the DoE has extensive formal legal communication links and resources, policies and guidelines, as well as a Legal Handbook. These sit alongside informal legal support from colleague school leaders. At a supervisory level, legal support is available from principal network leaders and other regional system staff. At DoE level, principals access legal support from specialist functional advisers, and lawyers within the Legal Services unit. Data indicated that the Legal Services unit is generally regarded very highly, although negative perceptions have been voiced. Interview data suggested that legal advice is sought in circumstances of principal doubt, and in 'high stakes' situations.

*Figure 53. Summary of Research Question 1.3 (Government school system)*

### ***Catholic school system.***

Interviews with participants working within the Catholic school system in Tasmania presented a picture regarding principals' sources of legal information which was similar to that for government school leaders, as illustrated in Figure 54.



*Figure 54. The levels of legal support available to Catholic school principals.*

*School level.*

Interview data collected from Catholic school principals and a senior system leader identified several sources of legal decision support at the school level. A critical legal resource for Catholic principals was the suite of policies and guidelines (see Appendix T2). The interview data concerning school legal policies and guidelines was limited.

Nonetheless, the importance of principals' awareness of the policies and guidelines was recognised. For example, Principal Kelsey observed:

Legal matters tend to be quite complex, and it's becoming more and more you know. You've got to abide by a large number of discrimination, enrolment policies, there's a whole range of things. So you need to be reasonably across the board with all these things and make sure that occurs. (Personal communication, September 7, 2015)

Principal Drew pointed out that, "In terms of risk management, the system will provide policies and procedures and training and so on." (Personal communication, June 13, 2014)

The reliance of Catholic principals on colleague school leaders for support in dealing with legal issues was another theme identified in the data. Reliance on colleagues was not merely a matter of younger principals seeking information and advice from older principals — although that was recognised — but rather, a more general situation of a principal not having previously dealt with a particular issue consulting one who may have done so. This form of legal support was noted by Principal Clark, who observed, "Another thing I would probably have done a lot of earlier on as a principal, was asking colleague principals, and particularly the experienced principals. And now, a lot of people ask me." (Personal communication, September 8, 2015)

Principal Drew emphasised the benefits of discussing a legal problem with a colleague, regardless of relative time in the principalship:

There'll be a fraternity or a sorority that you can access with a problem. And that's what we do. "This is my situation." There's a good chance that one of us has encountered something similar. . . . It doesn't matter what level of experience, everyone should still do that, and does do that. (Personal communication, June 13, 2014)

Consideration of the sources of legal support available to Catholic principals at the school level is not complete without some discussion of the different situations of systemic and non-systemic Catholic schools and colleges (Austen, Swepson, & Marchant, 2012; Casey, 2001). In Tasmania, systemic schools and colleges obtain legal advice through the TCEO, from the firm of

lawyers retained by the Archdiocese. Leaders of non-systemic Catholic schools and colleges can also use this firm but may also engage their own lawyer if they feel that is appropriate. Principal Chris advised, “We have an Archdiocese lawyer who we mostly use, but we would have the freedom to use someone else.” (Personal communication, June 13, 2014) Similarly, Principal Drew, another non-systemic school leader, noted:

We can move in and out of that system as well. Normally the advice is pretty sound that we would get from the Archdiocese or from its lawyers. Some things are very complex and unique, and X’s had a couple of those, where [they have] gone outside to find that particular expertise in Industrial Law or something like that, which has been very helpful. (Personal communication, June 13, 2014)

*Supervisory management level.*

A further source of legal decision support for Catholic school principals lay with the Northern and Southern Heads of School Service and regional TCEO staff. A number of specialist Education Officers support principals dealing with workplace health and safety, disability and racial discrimination, and pastoral care and wellbeing issues (including child welfare matters) (Tasmanian Catholic Education Office, 2014-15).

*TCEO level.*

Catholic school principals who require support in dealing with legal matters can also obtain assistance from experienced specialist administration staff within the TCEO who provide information on various legal matters (Tasmanian Catholic Education Office, 2014-15) including:

- students with disabilities and other special needs;
- maintenance compliance and facility risk management;
- workplace health and safety (including risk management), child protection, industrial relations and human resources; and
- information and communication technology.

System Leader Cameron outlined the role played by TCEO staff in advising principals about legal issues as follows:

I suppose we [the TCEO] try to be a bit of a filter, so if we can provide the advice, rather than going to the external lawyers, then we try and do that. So that’s essentially the arrangements we have. And XXX, the group who’ve been doing the work for us have been doing it for quite some time, so they’re familiar with our organisational structure

and so on. And they have various people skilled in particular areas, whether it's Industrial Law or HR Law or Family Court, that sort of thing. (Personal communication, October 5, 2015)

Themes that emerged from the government system interviews were also reflected in the data collected from Catholic system participants. That is, in relation to the circumstances in which school principals seek expert legal advice, and their satisfaction with the legal support provided by the lawyers. Firstly, on the issue of when to consult lawyers about their legal problems, participants provided both narrow and wide answers around the notion of uncertainty. Principal Clark's explanation was narrowly constructed. "If you're not sure about it; if in doubt it's the old thing, talk to someone who's a little bit more comfortable in that area. 'Look, can you just interpret that for me? Explain to me what it really is saying'." (Personal communication, September 8, 2015) Principal Chris addressed the issue in much more general terms:

When there is an issue that you identify, you'll either know innately that you've got the capacity to deal with it through experience, or there may be a question mark. . . . If we have a question mark, the way the law is shifting with regard to the big ones around discrimination and harassment and all the rest of it, is that even though you might have 99 per cent confidence that you're right, I have learnt that it is far better just to check. Because inevitably, whilst you thought you were on safe ground, some aspect of the law is presented back to you that makes you step back and maybe readjust. (Personal communication, June 13, 2014)

In addition to doubt impelling participants to seek legal counsel, Principal Kelsey discussed the need for legal advice arising from the involvement of external parties in a dispute, "So we had what I viewed as the unholy quadrangle: the Union, Workers' Compensation, the Police and the Teachers' Registration Board" (Personal communication, September 7, 2015) — the very embodiment of a high stakes issue warranting legal advice.

In terms of participants' satisfaction with their legal support the data were limited and divergent, with examples based on particular fact situations. On the positive side, Principal Clark sought insurance advice following an incident in which a student was bitten by a farm animal, "The lawyer gave us good advice, and all she wanted was . . . to make sure that all the boxes had been ticked and that we were operating well within the rules of what we should" (Personal



communication, September 8, 2015). A less positive experience was reported by Principal Chris, who described his legal support concerning a serious workplace harassment case:

Extremely difficult to deal with. Very complicated and yes, again, required really significant legal support. And in that circumstance there was conflict in terms of the legal advice that happened. So sometimes you end up trying to find your way through something that's already difficult, and then trying also to discern which way you go.

(Personal communication, June 13, 2014)

A further negative perspective on obtaining legal advice was provided by Principal Kelsey, referring back to her nightmare of the “unholy quadrella”: “Hopefully it doesn’t happen too often, because the school foots the bill. And as you can imagine, the amount of money involved in legal fees, starts to mount up.” (Personal communication, September 15, 2015)

### ***Summary — Research Question 1.3 Sources of legal information.***

A summary of qualitative findings regarding Catholic school principals’ sources of legal information is at Figure 55.

The interview data also revealed three levels of support for Catholic school principals. At the school level Catholic principals reported relying on formal policies and guidelines, as well as informal support from colleague principals. Leaders of non-systemic Catholic schools can obtain advice direct from legal practitioners in private practice. At a supervisory level, support is available on legal issues from regional TCEO staff. Functional advisers are also available at TCEO level, and those staff can facilitate legal assistance required by principals. Like their government counterparts, data indicate that Catholic principals seek advice when in doubt, or if possible consequences are serious.

*Figure 55. Summary of Research Question 1.3 (Catholic school system)*

### ***Independent schools***

The researcher interviewed nine principals and administrators of Independent schools. All were members of Independent Schools Tasmania (IST), a mutual association of non-government schools which represents, advises, and supports its membership. Two of the participants

interviewed (Principals Chris and Drew) were principals of Independent Catholic non-systemic colleges and their responses have been considered with those of other Catholic school principals.

Of the remaining participants:

- one was a senior administrator within the Independent education sector;
- one led the management of a grouping of Independent faith-based schools;
- two principals were leaders of large faith-based Independent schools with high proportions of students assessed as having educational advantage (Australian Curriculum Assessment and Reporting Authority, 2015) (higher EA schools);
- three principals were leaders of small faith-based Independent schools with average to low proportions of students having educational advantage (Australian Curriculum Assessment and Reporting Authority, 2015) (lower EA schools).

The dominant message from the data was that of the Independent school leader bearing ultimate responsibility for legal issues arising in his or her school. That situation was contrasted with government and Catholic system school principals operating within a framework of bureaucratic accountability. The position was summed up by Principal Sydney:

My responsibilities as the Executive Director of the school – the CEO if you want to put it that way - where ultimately I’m responsible for the execution of all the business rules and regulations. . . . Understanding that in the end if something does go wrong, that’s where it finishes up (*pointing to her desk and chair*). You can’t pass it up the line.

(Personal communication, November, 11, 2015)

The contrast with systemic legal arrangements was described by Administrator Taylor, who pointed out that:

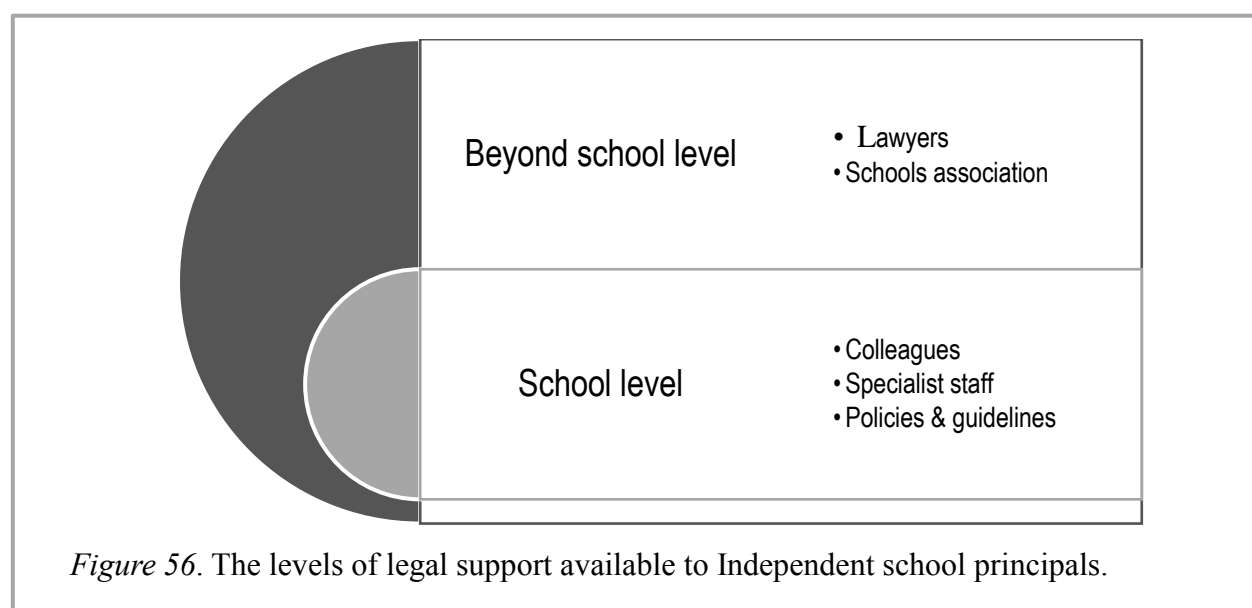
Government schools and Catholic schools are within a system, so the system management, if you like, provides the framework for compliance with those things. Individual school principals, whilst they’re the people on the ground who actually monitor and refer issues to their senior management, it’s those senior management who are responsible for the compliance. But in the Independent schools there’s no such system, so individual school principals really do have this compliance burden and responsibility solely on them. (Personal communication, November 10, 2015)

Notwithstanding the perception that “The buck stops here” (Harry S. Truman Library and Museum, 2016), the data revealed that Independent school principals also secure legal decision

support from a range of sources located within their internal and external legal environments, as shown in Figure 56.

*School level.*

The data revealed that, while a government or Catholic school's library of policies on legally-related matters constitutes an important source of legal decision support for principals within those systems, this also applies to principals of Independent schools. Although perhaps self-evident, it should be noted that Independent schools in Tasmania are largely<sup>10</sup> stand-alone institutions, each with its own school principal and leadership team, and governed by its own Board. As a consequence, Independent schools (to a degree), adopt their own policies and guidelines appropriate to their mission and context.



Even though there are no system-based legal policies for Independent schools, all non-government schools in Tasmania must be registered under section 144 of the *Education Act 2016* (Tas), by the Registration Board. That Board requires schools applying for registration to meet certain specified standards, including the provision for certain matters in their policy documents (Schools Registration Board, 2015). Matters which must be addressed include:

- enrolment, attendance, and participation procedures;

<sup>10</sup> The exception is the cluster of four Christian faith-based schools located in Southern Tasmania (Christian Schools Tasmania). Each of these schools is led by a principal, but they are governed by a single common Board, and share higher level administrative support.

- teacher qualifications;
- work health and safety, including facilities safety and maintenance;
- students with disabilities, racial/language diversity and other special needs;
- governance and administration;
- risk management;
- grievance process;
- Employee Code of Conduct including: duty of care; physical contact; discrimination; sexual misconduct; use of tobacco, alcohol, other drugs and medication; and natural justice and procedural fairness.

It may be assumed that, having been registered under the education legislation, Tasmanian Independent schools have written policies that address these issues. All of these policy areas may have a bearing on a principal's dealings with legal issues.

The adoption of registration-based policies by Independent schools as a consequence of the school registration process was noted by Former Principal Hayden in her interview when she commented, "Schools are generally told: 'These are the standards to meet; these are the standards by which you have to abide'." (Personal communication, October 14, 2015) A more detailed view was provided by Administrator Taylor:

There are about 12 different standards, which relate to things like curriculum and assessment and so on, but also financial viability, governance, number of teachers per students ... proper grievance policies, proper enrolment and attendance policies; so those sorts of things come under the standards. And under the governance standard there is a whole raft of other legislation with which schools have to comply ... things like workplace health and safety, building maintenance – all the things that any other organisation has to comply with that has employees. (Personal communication, November 10, 2015)

The discussion about legal decision support for government and Catholic school principals referred to specialist management advisers whom principals consult regarding legal problems. While Independent schools, by their very nature, do not sit within such a safety net of systemic support, the data indicate that some principals within the Independent sector have access to specialist staff support within their school's institutional framework. Principal Bailey, leader of a higher EA school, pointed out:

We have the Deputy Principal and Director of Business Affairs. They have experience — they don't have legal backgrounds, but they have long-term experience in the school and other schools, and with legal problems. ... We have an industrial relations expert on retainer for the school as well. ... We have a Risk and Compliance Manager, full-time at the school, and so her job is to make sure we're across all of our risk analysis with the activities that we do with the school. (Personal communication, June 4, 2014)

Principal Sydney, again from a higher EA Independent school, described a similar advisory structure, "I now have an HR adviser, an occupational health safety and risk manager, a director of staff performance and various other business and accounts people." (Personal communication, November 11, 2015) In contrast, Principals Ainsley and Quinn (Personal communications, June 3, 2014, and October 14, 2015), from lower EA schools, identified their internal staff support as being their school's Business Manager.

A grouping of four Tasmanian Independent schools shares a common board and higher level management functions. According to the My School website (Australian Curriculum Assessment and Reporting Authority, 2015), these schools are a mix of medium to low educational advantage. Administrator Roger noted that, in their centralised business office, "We have a Business Manager, a Compliance Officer, HR, Accounts, Finance ... Centralised services, but with delivery back out through schools." (Personal communication, November 10, 2015) This structure appears to facilitate access to specialist staff advice for schools, which might not otherwise have had the resources to employ such specialists independently.

Participants' interviews confirmed a particular need for Independent school principals to have access to legal decision support, in the form of staff advice or personal knowledge. It was in light of this need that Administrator Taylor raised an intriguing possibility during the course of her interview. This possibility involved the employment of compliance experts as school principals. As Administrator Taylor explained:

Individual school principals really do have this compliance burden and responsibility solely on them. ... Some schools have a business manager who takes most of those risk and compliance issues under their responsibilities. ... Schools elsewhere and in other States and countries, who feel that these issues are the important issues of the moment for them, employ as a school leader someone who is not a teacher, doesn't have a teaching background, but is a Chief Executive Officer or Chief Executive, who comes from a

business background or elsewhere; who is skilled in those risk management and other finance and administration areas. (Personal communication, November 10, 2015)

Such an arrangement may not be legally possible in Tasmania under the current requirements of the *Teachers' Registration Act 2000* (Tas), although the legislative position is not entirely clear. This approach is discussed in more detail in Appendix J regarding stressor management for school principals.

The interview data disclosed a further source of legal decision support for Independent principals in the form of collegial advice accessed by leaders from both higher and lower EA schools. Principal Ainsley, who leads a lower EA Independent school, outlined one form of collegial advice she relied on, in the following terms:

A group of 10 principals ... we reflect on the challenges we have in our schools. And this has come up numerous times, "What's our legal obligation? What's the threat here?" And one school ... mentioned the fact that they had to deal with a law suit, having suspended a student from school who was involved in a fight. ... So we learn from each other. (Personal communication, June 3, 2014)

Such informal sharing of legal support amongst colleagues was echoed throughout the interview data. Principal Sydney outlined a substantial structure of both formal and informal collegial information sharing:

There is the Association of Heads of Independent Schools Australia. ... That has a repository of things that lots and lots of us (there are about 700 members) have offered up to help colleagues. ... And then there're the casual relationships. ... I belong to a loose group of principal friends. ... On the start or back of an annual conference for all principals, we will get together somewhere. ... We work over two days, we would do about 10-12 hours work in a formal meeting, sharing and discussing and working with things, interspersed by a round of golf. ... He's in need of something I had, and he just rang up and said "Have you got one of these?" So we share. (Personal communication, November 11, 2015)

#### *Beyond school level.*

The legal decision support provided to principals by IST was mentioned positively by several principals of schools across the spectrum from lower to higher EA. IST advises and supports member schools at their request (Independent Schools Tasmania, 2016), and provides CPD for

principals of member schools regarding school registration (including policy documents) as well as specialist issues around disability discrimination and disability standards in education. It also provides specialist staff advice to principals on compliance with statutory requirements.

Principal Ainsley, who otherwise reported very little in the way of information support for dealing with legal problems in her lower EA school, expressed positive views regarding IST assistance with legal training:

The biggest awareness comes from Independent Schools Tasmania. ... They are often the ones who say, “Let’s train you in this”, you know. Workplace health and safety is a huge one. ... And anti-discrimination, that’s one where we recently had a training seminar here at school, instigated and run by IST. ... And that was very helpful. (Personal communication, June 3, 2014)

Principal Sydney also mentioned support from IST on legal issues in her higher EA school:

I do also, from time to time, take advice from Independent Schools Tasmania’s industrial relations adviser, and that’s a useful first base. Just to say, “Look, I’ve got this situation. What do you think?” And they’ll give a preliminary [opinion]. (Personal communication, November 11, 2015)

The interview data collected from Independent school participants concerning lawyers as a source of legal decision support was varied. Perspectives that emerged reflected the different contexts of the institutions involved. A grouping of schools, which operates as a type of “mini-system” (Administrator Roger, personal communication, November 10, 2015), reported an on-going relationship with a local legal firm. Principals submit their requests for assistance to the CEO, who then deals with the lawyers on their behalf. This process differs from the experience of other school principals in the sector, and is more closely aligned to the situation of Catholic systemic principals. Importantly, IST does not employ a legal practitioner on staff and recommends principals of member schools to consult their chosen law firm for expert legal advice (Administrator Taylor, personal communication, November 10, 2015).

Principals from the higher EA schools reported receiving advice on legal issues from large local firms of solicitors<sup>11</sup> able to provide support across a number of areas of law. Principal Sydney explained, “We use a well-known Hobart legal firm and they provide for us the expertise

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<sup>11</sup> In Tasmania, legal practitioners are admitted to practise as both barristers and solicitors, although some practise solely as barristers — *Legal Profession Act 2007* (Tas).

we need. We try as much as possible only ever to use the firm, not in the sense of monopoly, but they've got the corporate knowledge.” (Personal communication, November 11, 2015) The situation for principals of lower EA schools was somewhat different. Neither Principal Quinn nor Former Principal Hayden (Personal communications, October 14, 2015) had ever sought advice from a legal practitioner during their combined two decades plus experience in the principalship. Principal Ainsley reported that during her ten years as a school principal she had once obtained legal advice on an anti-discrimination matter, and had recently sent a draft policy to a lawyer for consideration (Personal communication, June 3, 2014). Principal Ainsley commented favourably on the lawyer's support in the anti-discrimination matter, “S was very kind; put our minds at rest that we had done the right thing.” However, she also expressed some negative views about lawyers in general, “Expensive lawyers who hardly ever get back to you unless you chase them. And then they charge you an arm and a leg.” It would appear that, at least for Principal Ainsley, questions of cost and accessibility may influence principal satisfaction with support from a legal practitioner.

***Summary – Research Question 1.3 Sources of legal information.***

A summary of qualitative findings regarding Independent school principals' sources of legal information is set out at Figure 57.

While the legal decision support for Independent school principals is similar to that of government and Catholic principals, the structure and context is different. Importantly, Independent school leaders have no systemic hierarchy to rely on, although some well-resourced schools employ a range of specialist advisers within the school organisation. All Independent schools are required by registration to maintain a basic suite of policies that impact legal issues. A number of participants made mention of co-operative arrangements with colleague school leaders to share legal knowledge and resources. An important difference in the Independent sector may be the cost of seeking legal advice from private practitioners being a barrier to some principals obtaining expert legal support.

*Figure 57. Summary of Research Question 1.3 (Independent schools)*



## Chapter 6 Overview and Chapter 7

This chapter discussed qualitative findings in relation to Research Question 1 – *What is the legal literacy of Tasmanian school principals?* In particular, it examined the areas of law participants had dealt with, the level of their legal knowledge, and the sources of legal information they consulted. In terms of areas of law, the data revealed a wide, diverse and expansive range of legal topics that principals may face in their role as school leader. The interview participants expressed a wide consensus about the need for all principals to understand education law, but voiced important disagreements regarding the extent of knowledge required, as well as the standards that principals should meet in their legal knowledge. The data on sources of legal support revealed many similarities between legal support in the government and Catholic sectors, as well as in some higher EA Independent schools, concerning policies and guidelines, specialist functional advisers, and access to lawyers. It revealed, however, that smaller lower EA Independent schools, while they will have at least the policies required for registration and a school Business Manager, may miss out on the benefit of functional specialist advisers and may find the cost of obtaining legal advice from a private law firm prohibitive.

The discussion now moves in Chapter 7 to findings reached in relation to the remaining research questions for this study:

- Research Question 2 — *What is the legal consciousness of Tasmanian school principals?*
- Research Question 3 — *What is the legal context faced by Tasmanian school principals?*
- Research Question 4 — *What costs are involved for Tasmanian school principals in dealing with legal issues?*
- Research Question 5 — *What improvements do Tasmanian school principals suggest for their legal support?*

## Chapter 7

### Research Questions 2, 3, 4, and 5: Findings

#### Introduction

This chapter presents findings in relation to the following research questions:

- Research Question 2 — What is the legal consciousness of Tasmanian school principals?
- Research Question 3 — What is the legal context faced by Tasmanian school principals?
- Research Question 4 — Do Tasmanian school principals recognise any negative impacts from their dealings with legal matters?
- Research Question 5 — How do Tasmanian school principals suggest their education law support be enhanced?

The findings are drawn from mixed method, quantitative and qualitative data collected using an on-line survey, and through written comments on open-ended survey questions as well as a series of in-depth, semi-structured personal interviews.

#### Research Question 2 — What Is The Legal Consciousness of Tasmanian School Principals?

Data in respect of the second research question, concerning the *legal consciousness* of Tasmanian school principals, was collected through interviews with school principals, principal network leaders, senior system leaders, and administrators. *Legal consciousness* is a term adopted from the sociology of law and refers to the meanings accorded to laws by every-day, that is non-legally-trained, people in their working and personal lives (Ewick & Silbey, 1998; Halliday & Morgan, 2013; Silbey, 2008).

When participants were asked what education law meant to them and their principalships, several responded with a comment about legislation and rules. For example, Principal Perry referred to, “Accountability, I suppose; rules, regulations, DoE policies, procedures” (Personal communication, September 22, 2015). Principal Quinn suggested, “For me, it’s the legislation that dictates to us how our school should be run with regard to the *Education Act*” (Personal communication, October 14, 2015) and Administrator Whitney highlighted, “Rights and entitlements under the law.” (Personal communication, December 8, 2015) Those answers accorded with the textbook wisdom that considers the body of education law to be constituted by

the legislation, case decisions, and legal principles that impact on the operation of schools (Alexander & Alexander, 2011). However, the responses provided by other participants suggested that this “black letter” (Samuel, 2009, p. 434) legal understanding may not reflect the whole story about the ways in which the principals conceptualise education law.

The notion that school principals may understand law in ways that fall outside the boundaries of rules and regulations underlined the importance of subjective belief in education law and its operation. System Leader Cameron, an educational administrator with many years’ experience explained the situation succinctly, “Legislation certainly, that will impact on them, and it’s *their interpretation of that* [emphasis added] is where the impact is”, leading to “variations of the theme of that, on certain things.” (Personal communication, October 5, 2015) The subjective understanding of law by people who generally do not hold formal legal qualifications constitutes legal consciousness. In the context of education law, legal consciousness may inform every aspect of a school leader’s legal decision making. For example, during their interviews System Leaders Jersey and Cameron, and Principal Chris, all commented that Tasmanian school principals now work within a litigious society, which impacts on their education law responsibilities. The factual basis of their view may be disputed (Trimble, 2011). Nevertheless, those participants held that view as an element of their legal consciousness, and it thereby influenced their expectations of, and dealings with, legal issues. The interview data for this study revealed a number of facets of participants’ legal consciousness, including ideas that education law equated to children’s safety, that it was rather a matter of leadership or ethics, and that it was embodied common sense.

### **Law and safety.**

The identification of law with student, and sometimes school, safety was expressed by many participants. System Leader Jersey described law as, “Safety, because it’s about keeping us safe, and everybody safe, kids safe” (Personal communication, August 202015). System Leader Trevor used different terminology, but with the same apparent intent when he linked education law with, “duty of care, would be the dominant thing.” (Personal communication, November 11, 2015) Principal Drew explained, “I think you can reduce it to a pretty simple process, in terms of ensuring that everyone in the organisation, and it’s mostly students, are safe, well cared for, well educated.” (Personal communication, June 13, 2014)

The impact of this identification of law and safety can be seen in Principal Network Leader Frances's interview when she discussed the possibility of restraining a violent student, "A situation where a violent child needed to be restrained for the safety of other children. So you've got to make that judgement call, and I guess, if it's based on safety I think that's fair enough." (Personal communication, 24 June, 2014)

### **Law and leadership.**

A number of participants expressly connected the application of law with the practice of school leadership. System Leader Jersey used a metaphor of navigation when describing the legal responsibilities of a school principal, "I'd nearly have to say navigate, because you have to navigate your way through what is there, and how am I going to lead, what do I have to do?" (Personal communication, August 20, 2015) That notion of leadership direction was also evident in the views expressed by Principal Chris:

People do look to us to have that information at our fingertips, and to have that capacity to, in a crisis situation when something goes wrong, to make a decision and take people [on] the correct path. (Personal communication, June 13, 2014)

An association between law and leadership was also drawn by Principal Sydney in discussing her position as a role model within the school:

I am happy to be a role model for our community, but that in itself is another reminder of the principal's position in relation to the law. ... How I lead as a person will "infiltrate", probably a good word, infiltrate the culture and character of the school. ... If you're a shoddy person you'll get a shoddy school, because the staff and the students will take their cues from what you accept and don't accept and what you say and don't say. (Personal communication, November 11, 2014)

Consciousness of law in terms of leadership was most clearly described by Principal Ainsley, who suggested:

You must ask questions about the leadership and the makeup of the school's governance and management structure if it's being sued continually. It could be that the clientele in that school is dissatisfied. But even that, you know, with good leadership, you'll find a drop off in complaints. (Personal communication, June 3, 2014)

### **Law and ethics.**

Several participants suggested a nexus between law and ethics. Principal Bailey observed, “You just try to treat people [as] ethically and honestly as you can, and in a way that they feel that they’ve been heard and treated fairly.” (Personal communication, June 4, 2014) The idea that ethically sound conduct in some way satisfied the requirements of law was also expressed by Principal Drew:

I think if you are acting ethically, and keep the priorities in the front of your mind the whole time (the protection and welfare of the students) and you’re acting ethically, you know you’re acting, from your own point of view, right. ... Then whatever transpires down the track, legally, your behaviour will have provided you with that protection. If you act unethically, or from some other motive, then you could be heading for problems. (Personal communication, June 13, 2014)

### **Law and common sense.**

The final aspect of legal consciousness that emerged from the interview data was a linkage between law and common sense. That idea was expressed by Principal Ainsley in describing an incident involving teachers dealing with a child who had climbed a tree in the school grounds:

One . . . wanted to jump in the tree behind her. And I said ‘No. You have your own safety to check first.’ Common sense. And she was like, ‘But what if the child falls out, and I’m responsible?’ I said, ‘No, your own safety comes first.’ That wasn’t the law. That was common sense. (Personal communication, June 3, 2014)

In fact, it is the law in Tasmania (*Work Health and Safety Act 2012* (Tas) s. 28) that a worker must take reasonable care of their own safety. Nonetheless the principal clearly believed that the demands of common sense would override the legal obligations and protect the parties from possible liability.

### **Summary — Legal consciousness.**

A summary of the study findings regarding school principals’ legal consciousness is at Figure 58.

Legal consciousness relates to the beliefs or understandings about the law held by persons who are not legally qualified. The interview data suggests that school principals may connect their ideas about the law with notions of safety, leadership, ethics and common sense, which may or may not reflect legal requirements.

*Figure 58. Summary of Research Question 2.*

### **Research Question 3 — What Is The Legal Environment Faced By Tasmanian School Principals?**

The third research question for this study required an examination of the legal contexts that influence Tasmanian principals' school leadership and management. Qualitative data were obtained from document analysis of local newspapers together with interviews conducted by the researcher with Tasmanian school principals, principal network leaders, senior system leaders, and administrators across the three schooling sectors as well as a government system education lawyer. The data raised a wide range of factors that may influence school principals' dealings with legal matters. These factors varied in location, from the edge of the external legal environment (for example, international agreements) to the school organisation's internal legal context.

This notion of the legal environment, within which a principal deals with legal issues arising in connection with his or her school, was reflected in much of the participants' discussions. For example, Principal Network Leader Deb commented that, "Schools, you know, are really microcosms of a community, and often things that happen outside in a community can be visible within the schools as well." (Personal communication, August 24, 2015) In the same vein but pitched at a higher level was Administrator Whitney's description of the Federal context of educational legislation in Australia, "What's right for Tasmania may not be right for New South Wales, or for the whole country, as a uniform or blanket law." (Personal communication, December 8, 2015)

Consistent with the conceptual framework set out in Chapter 3, the findings regarding this research question are presented in terms of the school's external and internal legal environments, commencing with influences most distant from the principal's immediate professional context.

### **External legal environment.**

The United Nations' *Convention of the Rights of the Child* (1989), provides, among other human rights, the universal right of children to education. Administrator Whitney observed that this Convention impacts on principals' legal decisions in Tasmanian schools. She noted:

They're some of the things that we think of: legislative frameworks from around the world, the *Convention on the Rights of the Child*, the stand that the United Nations might take or UNESCO, and where that sits in terms of our legislative framework, and how that's interpreted through into the local context. (Personal communication, December 8, 2015)

Narrowing the focus somewhat, a number of interview participants also mentioned aspects of the national (Australian) legal context and its impact on their legal dealings. In particular, participants discussed the flow-on effects on their school procedures from the Royal Commission into Institutional Responses to Child Sex Abuse (the Child Sex Abuse Royal Commission), as well as the "human rights consciousness" (Johns, 2005, p. 289) perceived within Australian society.

Concerning the Child Sex Abuse Royal Commission, two principals described the impact of the Commission's findings. The first principal gave an insider's perspective, of a school leader who had been summoned to give evidence before the Commission. The second principal discussed the findings as an observer, concerned to ensure the welfare of students. Principal Sydney reported:

You're talking to a [person] who was in the Royal Commission last year, being grilled about the sexual abuse of children at this school 55 years ago. And we thought we had everything perfect, and then this just emerged out of nowhere. So you'd never sit back as a principal of [a] school and say 'We've got it right.' You need a monitoring process. (Personal communication, November 11, 2015)

Principal Drew discussed the Child Sex Abuse Royal Commission insofar as its findings highlighted the need for comprehensive and regular training of school staff in all matters concerning child protection:

We'll be regularly having discussions, conferences, seminars or whatever on child protection with our staff, each year ... mandatory reporting, [child] protection, spotting issues of concern and so on. I think we're going to come into an environment where

that's much more formulaic, much more regular, and given much higher priority. And I think that's coming out of the Royal Commission stuff. I think the recommendations around schools are certainly going to tighten up in those areas. (Personal communication, June 13, 2014)

The issue of anti-discrimination rights enacted through Commonwealth (and State) legislation and reflected within schools was raised by several interview participants. Principal Perry noted the increased importance of the issue within schools, "With the Disability Standards and the legalities surrounding that, you know, that's another big area that's really come in over the last three to four years." (Personal communication, September 22, 2015) Interestingly, two senior government system educators referred to the current level of legal rights awareness within schools as "a new world". Principal Jordan observed:

We are now in times where we've got to be really mindful of the legal ramifications for care, for our responsibilities, and knowing full well what our role is. Because there are more demands, there are more students presenting with particular needs and issues. . . .

We are in a whole new world in lots of ways. (Personal communication, August 28, 2015) System Leader Jersey similarly noted, "Society expects more; there are more community people having rights and more people in the community being constant about their rights. And it's distracting sometimes, but it's obviously part of the new world." (Personal communication, August 20, 2015) Further data in relation to the impact of human rights and anti-discrimination on Tasmanian schools and school leaders was obtained from a review of local Tasmanian newspaper reports concerning schools and non-government organisations including:

- Social movements: indigenous rights (Johnston, 2009, Oct 7); lesbian, gay, bisexual and transsexual rights (Baker, 2015, Mar 15); civil liberties (No author, 2012, Aug 18).
- Special interest groups: Australian Christian Lobby (Bird, 2015, Mar 16); Disability Education Lobby (M. Smith, 2015, Apr 19).

A legally-related issue at the State (Tasmanian) level identified by participants as having an impact on legal matters within schools was the Coroner's findings regarding the drowning death of a government high school student a number of years previously — *Levi, R. (2012)*. System Leader Judy, a very senior system leader within the government system, noted the impact of the tragic accident and the deficits in school administration which contributed to the fatality:



I think the worst thing for the State was the drowning of the young fellow up in the Northwest, where there wasn't permission. ... The flow-on effect is that you just tighten up every guideline and make sure everyone knows. The impact throughout the Department was massive. (Personal communication, June 23, 2014)

Principal Drew's comments confirmed that the impact was also felt within the Catholic education system:

Training and briefings and conferences and so on. ... A lot of that's focused on looking at Coroner's reports, and Commissions of Inquiry and court cases into tragedies and where they have gone wrong. And where there's a failure of oversight and risk management. So we change our procedures as a result of those, as a result of that learning. (Personal communication, June 13, 2014)

It should be acknowledged that neither the findings of the Child Sex Abuse Royal Commission, nor those made by the Coroner, constitute law in the sense of an enforceable statutory requirement, although it is clear from the data that participants in the study treated them with an equivalent degree of seriousness.

Another aspect of the school's external legal environment that participants recognised as influencing school-based legal issues at a system level is the tribe-like divisions between the government and non-government sectors in Tasmania. The head of a large Independent school made the point that unhelpful attitudinal barriers existing among the education sectors served to prevent much co-operative practice and sharing of legal resources. Principal Sydney commented:

I was staggered to see that all the principals in Tasmania, once a year, got together and talked about curriculum and assessment and other issues. Unfortunately ... that fell apart. ... The inter-sector principals' meetings have just started to come back. No other State could do that. So I think in terms of mutual support for each other as principals with significant legal obligations, Tasmania's probably got the best chance of mutually inclusive support. ... I just wish I could get past that where, 'You're Independents; you're not us.' (Personal communication, November 11, 2015)

### **Internal legal environment.**

The interview data also raised a number of issues relevant to the school's internal legal environment and stakeholders including legal risk management, legalisation, as well as the very nature of the school institution. The concept of legal risk management was mentioned by almost

every participant interviewed for this study. It was discussed in terms of the common law duty of care owed within the school environment toward students and staff, as well as the statutory obligations borne by school principals to provide a safe workplace under the *Work Health and Safety Act 2012* (Tas). Participants also observed that the level of legal risk awareness represented a relatively recent change. The data clearly suggested that legal risk management in schools was about protecting the personal safety of students and staff. That view was expressed by Principal Logan:

I'm responsible for the safety of every child and every staff member. So, no, you don't leave anything more to chance than you have to; you try to cover off on all the bases. That's one of the most important roles that we have really. (Personal communication, September 10, 2015)

Principal Jordan similarly reported:

We're very mindful of it, mindful of the duty of care. Duty of care is a big issue in schools, and it has become very tight. We do risk analysis, risk management; very much on the ball in regards to looking after students and protecting students. That's at the forefront of our practice. (Personal communication, August 28, 2015)

Participants from across all three schooling sectors made similar comments in relation to their duty to assess and manage risk in their schools suggesting that a broadly-comparable policy approach has been adopted in Tasmanian education regarding risk management. The position on risk in government schools was outlined by Legal Officer Elliott, who noted:

[Risk management is] a big part of our advice to schools. ... And it's a huge part of how we do business. And so schools now are pretty well supported online with a lot of information about OH&S, risk assessment templates, and it's really embedded in how we do business. Schools are very well aware of the absolute critical need to risk-assess and risk manage any scenario. (Personal communication, June 24, 2014)

Principal Chris, the head of a large Catholic school, described risk management in his school in the following terms:

Workplace safety is really high on our agenda ... and overarching risk management. We understand that we operate in a highly litigious world now, so apart from the law requiring those risk managements to take place it means that we're also, as leaders, required to make significant demands on teachers. ... In days gone by you'd hop on a bus

and take students off on an excursion. Maybe with parental consent, maybe not. These days it has to go through a very strident risk management assessment. ... It's our job to make sure they fulfil that requirement, and that's around protecting students, obviously, but also protecting the [school] against any sort of action that might be taken against us if something went wrong. (Personal communication, June 13, 2014)

The issue of risk management in the Independent school sector was addressed by Administrator Taylor, who observed that, "There are more schools putting in place formal systems and policies to identify risk, to manage and prioritise the risks, and to have plans in place, documented plans in place, to alleviate the risks that are identified." (Personal communication, November 10, 2015)

The Tasmanian *Work Health and Safety Act 2012* protects the health and safety of workers and other people by eliminating or minimising risks arising from work or workplaces. It places specific duties on school principals as "persons conducting businesses or undertakings" (see s. 5 of the Act) to ensure the safety of school students, workers, visitors, and volunteers. Breach of the statutory duties by a principal is punishable, in the most serious circumstances, by a fine of \$600,000, five years in prison, or both. The interview data clearly demonstrated principals' awareness of these statutory obligations, as well as the potential liabilities they bear.

During her interview, Principal Network Leader Deb noted the changes in a principal's workplace responsibilities over time:

That's something that's probably changed from the eighties, and has become increasingly more monitored and vigilant, and a bigger responsibility for principals to make sure that workplaces are safe for everyone. Both physically and emotionally, and mental health and emotional well-being, physical well-being, those sorts of things. (Personal communication, August 24, 2015)

The punitive aspects of the legislation were highlighted by several participants. For example, System Leader Trevor emphasised the personal liability which may attach to school leaders, including government school principals:

It's one of those cases where principals can be directly prosecuted. So normal cases, in terms of people taking action against a principal, it would usually be through the Department; they'll actually try to sue the Department. But in Workplace Standards, they're able to directly prosecute principals, if they show they've not taken the right actions. (Personal communication, November 11, 2015)

From the Independent sector, Administrator Roger expressed similar concerns:

[Under] the new Work Health and Safety legislation, suddenly they [school principals] were found to be a Responsible Person; there were no ifs and buts. There were big dollars bandied about. ... They get nervous because compliance is obviously one of the few areas where there are monetary penalties or consequences of not doing it well. (Personal communication, November 10, 2015)

The interview data also highlighted a considerable number of ways in which legal risk management directly impacted school leadership practices, as set out in Table 20. It should of course be remembered that some of these matters will be specific to particular education sectors or schools.

Table 20

*Impacts Identified by Participants in Relation to Legal Risk Management*

IMPACT ON LEGAL PRACTICE	PARTICIPANT	SCHOOL SECTOR	QUOTE
Risk assessment process improves outcomes	Legal Officer Elliott (Personal communication, June 18, 2014)	Government	I think risk management, OH&S laws and that whole framework has just developed a million per cent over the last few years, obviously for very good reasons. . . . I think it facilitates more things happening because we're actually planning how to do them safely.
Need to advise School Board	Principal Chris (Personal communication, June 13, 2014)	Non-Diocesan Catholic	It's our job to make sure that, at Board Report level . . . there is a regular reporting to the Board with regard to risk management procedures. . . . I'm noticing more and more that their conversation around education has shifted to the side, and that they're anxious about wanting to see reports around risk management and workplace safety.
Employment of specialist compliance staff and administrative costs	Principal Bailey (Personal Communication, June 4, 2014)	Independent	We have a Risk and Compliance Manager, full-time at the school, and her job is to make sure we're across all of our risk analysis with the activities we do . . . That's a position because of the legislation . . . an extra position that 15 years ago most

IMPACT ON LEGAL PRACTICE	PARTICIPANT	SCHOOL SECTOR	QUOTE
			schools wouldn't have thought of. So there are extra costs to all this legislation and of course all the risk analysis that we do.
CPD for staff	Principal Bailey (Personal communication, June 4, 2014)	Independent	As the laws were changing and risk management came to the forefront, we did a lot of professional development with our staff regarding risk, writing risk assessments . . . the types of legal things that need to be in place in order to manage our own risk.
Record-keeping	Administrator Taylor (Personal communication, November 10, 2015)	Independent	A number of commercial firms are providing software for all that [risk assessments] to be computerised and records to be computerised and retained. There is a greater effort to systematise the process of risk management, and to have records. That's very important when incidents occur, that you've got records of what's been done in the past.

An interesting side issue to legal risk management—internal stakeholder resistance—was also mentioned by participants. It has been included to illustrate challenges principals face in implementing legal policy. Principal Jordan noted that some teachers would see a comprehensive written risk assessment for taking a group of students on a walk outside the school, “as being overkill and quite time-consuming” (Personal communication, August 28, 2015). Similarly System Leader Trevor observed that, “sometimes people get a little bit frustrated by the red tape” required by risk management plans although he did expressly make the point that people had gained fluency in using the assessment templates and no longer complained about, “those damned plans” (Personal communication, November 11, 2015). Negative staff attitudes were at the heart of the experience recounted by Administrator Roger:

It's not so much the principal saying “We're not doing excursions anymore.” The teacher's saying “If I have to fill out that form, I'm not doing excursions anymore.” And that's tough for a principal who then says “We see educational and social and cultural merit in this, but I'm not letting it happen unless you fill out the form”, and they say “I'm

not filling out the form.” ... It’s not so much the principals digging their toes in, it’s the poor principals having to cope with, and legitimately so, harried and stressed teachers. (Personal communication, November 10, 2015)

The interview data for the study also raised issues concerning the school’s internal legal environment relating to legalisation. Several participants commented on the legalised environment within which schools now operate and the ramifications of this change for school leaders. System Leader Jersey encapsulated a number of these ideas in her observation:

I think in schools, and certainly leaders in schools, recognise that we’re in a litigious society now, and so they’re very much more careful around the enactment of policies and practices in their schools, and they’re also more transparent about their processes. They seek advice more readily; they share what’s going on at an earlier stage; there’s a sense that it’s really important to be aware of all this information, and naivety or ignorance won’t stack up. (Personal communication, August 20, 2015)

Principal Kelsey noted the frequency with which legal action was threatened:

Say, there’s an incident between two children and the parents play ‘I’m going to speak to my lawyer; I’m going to escalate this matter up’ etc. ... The threat of it happens reasonably often, but the actual following through tends not to. (Personal communication, September 7, 2015)

Principal Network Leader Deb addressed this topic from the explicit perspective of the school principal and his or her possible liability under the law:

Liability ... that’s become, increasingly, an area of mindfulness for principals, around what you can be liable for and what you can’t. And I know the Department have been making sure that principals protect themselves and their staff from situations that may cause them to be liable for something or other. ... It’s also something that’s been increasing across the broader community. (Personal communication, August 24, 2015)

Another aspect of the internal legal environment which can impinge on schools and school leaders is the aggressive and abusive conduct toward the principal and staff by school stakeholders. This topic was discussed by Principal Sydney:

The other thing that comes to mind in terms of the law is ensuring that we have in place guidelines for teachers and students and parents, around Codes of Conduct that are expected in the school. I’ve had a number of calls from colleagues who say, ‘Do you have

a policy/ guidelines for Codes of Conduct for parents, or coaches, or volunteers, or staff in relation to ... ?' And I'm not talking about being frivolous ... these are aggressive, abusive parents and that's a fairly new phenomenon. So we've created policies. (Personal communication, November 11, 2015)

Several participants made particular mention of the difficulties they faced concerning personal attacks through social and electronic media. They pointed out that although such behaviour is largely legally unregulated it can have serious personal consequences for school leaders, and that they are precluded from responding by professional standards. On this issue System Leader Jersey observed:

Where our staff are bound by a Code of Conduct and Ethical Behaviour, we appear to have community members that aren't bound by the same. ... Staff attacked publicly, in forums like Facebook and those sorts of areas, and a campaign against them, and those staff can't actually have their own right of reply because they're bound by ensuring that we're professional and we can't go in to that space. (Personal communication, August 20, 2015)

Principal Kelsey also discussed abuse she experienced from aggrieved parents on social media and through widely distributed e-mails in which erroneous and personally damaging claims were publicly expressed about her private life:

As the principal you're not able to share all; the amount of information you're able to share is very limited. So other people can go on Facebook and do a whole range of stuff, send emails and other things. ... A whole range of accusations were made against me as a principal, as a person, were sent to me and to various other people. ... probably, someone in my child's school. (Personal communication, September 7, 2015)

Principal Kelsey reported seeking legal advice about a defamation action, but had chosen not to pursue that course.

The interview data strongly suggested that the particular institutional context of a school exerted a very real influence on the school principal's dealings with legal issues. Two very different examples involved firstly, the school as a business (as is the case with many Independent sector institutions) and secondly, the school as a faith community (which occurs across the non-government sector). The view of a school as a business entity was a matter raised by Principal Sydney, who leads a large Tasmanian Independent school. She pointed out that the

costs of satisfying expensive regulatory criteria must be met through the operating budget and will be reflected in the level of school fees:

I'm running an institution for education, that's our core business, and at the same time I'm also running a significant business. Each is equally important, mutually exclusive and heavily governed by law. I have a budget which is struck by my Board and that lasts for a calendar year, and any rules, regulations etc. that come in during the year become an on-cost for their implementation. ... Rising school fees in Independent schools. There are two key cost factors in that: one is wages, and the other one is the significant cost of implementing and administering policy. (Personal communication, November 11, 2015)

Several non-government school principals highlighted the faith aspect of their school communities and explained the ways in which that context influenced their dealings with legal issues. In doing so, participants raised matters as diverse as their concept of duty of care, school discipline, the school's ability to resolve matters internally, and the notion of divine protection from legal action. In the course of his interview, Administrator Roger provided insight into the nexus between a school's Christian ethos and the expression of that value system in legal matters:

We would take the view of Work, Health and Safety that we don't do it well because the law says [we must]. We do Work, Health and Safety well because the Lord says to us to love each other, and the best way we can love someone is actually to care for them. And I'm not loving you if I'm leaving water all over the floor for you to fall over. ... We would always try to say 'Our starting point could well be different because of what we believe' rather than just 'That's what the law says' or 'We're required to.' (Personal communication, November 10, 2015)

In a somewhat similar vein, although addressing the question of student discipline, Principal Bailey, the head of a large faith-based school, explained how the particular belief system within her school is reflected in the discipline process:

Suspensions almost never happen. It's part of [our] belief that there's a very flat decision making process. It comes down to one person making [a decision], but there's a large consultative process all the way along before decisions are reached. ... We don't have detentions or things you'd find in typical schools. We try to talk it through with the



individual child or students, and then provide support and opportunity for them to improve. (Personal communication, June 4, 2014)

Principal Quinn was the current principal of a small, faith-based Tasmanian school, and Former Principal Hayden had been the principal of the same school for a considerable period. These participants provided interesting views on ways in which the school's Christian foundation informed their legal obligations. Principal Quinn observed:

As a small Christian community, perhaps the attitude has been prevalent that 'We'll just do the best we can.' But obviously with the implementation of more stringent checks and balances we need to make sure that we're doing the best thing industrially and by best practice, not just what we think's acceptable. (Personal communication, October 14, 2015)

The second point, commented on by both participants, concerned the relationships within the school and the church community. Principal Quinn reported:

The school is run by the Church. ... Every member of the Church is a member of the School Association; they're a financial contributor. ... All those people ... have a vested interest in the school. So we don't have a litigious environment. What we've got is a very supportive and cohesive environment. (Personal communication, October 14, 2015)

Former Principal Hayden explained, "It's part of our Christian ethos, we like to deal with things 'in-house' as much as we can; dealing with things person-to-person, ... perhaps getting people to help sort through the problem." (Personal communication, October 14, 2015)

Principal Ainsley, the leader of a small to medium sized faith-based school, expressed a unique perspective on legal dealings within the school's value system. During her interview Principal Ainsley made the point a number of times that during her ten years of principalship she had not been required to deal with a single significant legal issue. She went on to admit that this was not through any legal risk management on her part, "I don't think we've always dealt with things well . . . We haven't always been very careful. In hindsight we were pretty careless in many ways." Principal Ainsley explained this legal good fortune at least partly in terms of faith:

I'm having trouble trying to work out if that's good [not having legal problems] or if we were just lucky, or it's the fact that we have Divine intervention. ... We feel very blessed that we didn't have to cope with legal issues. (Personal communication, June 3, 2014)

**Interview data reflected in model of legal environment.**

It will be recalled that Figure 30 in Chapter 3 illustrated an interim working model of the internal and external legal environments of schools, based on the relevant literature and research. That model has now been amended to include matters raised by the findings discussed by this chapter in relation to Research Question 3. The amended model is at Figure 59 (on page 194).

**Summary — Legal environments.**

A summary of study findings regarding the legal environments faced by school principals is at Figure 60.

Diverse factors constituting schools' external legal environments were raised in the interview data including: the United Nations' *Convention on the Rights of the Child*; the Sex Abuse Royal Commission and the social movement to ensure the protection of children from abuse; anti-discrimination rights; coroners' findings; and even divisions among the education sectors. Elements of schools' internal legal environments were also identified including: legal risk management; legalisation; aggressive conduct of parents; as well as the nature of the school organisation.

*Figure 60.* Summary of Research Question 3.

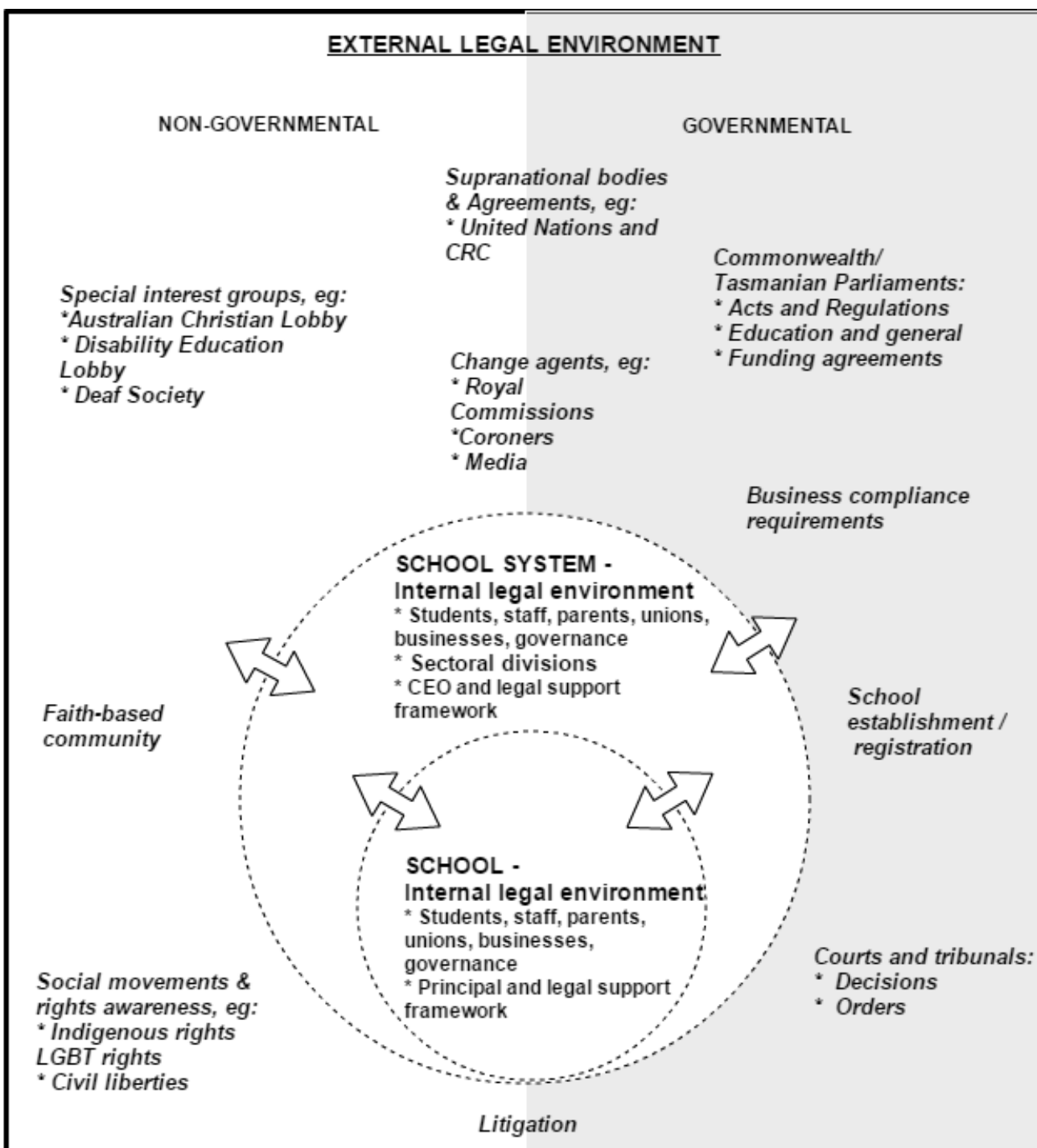
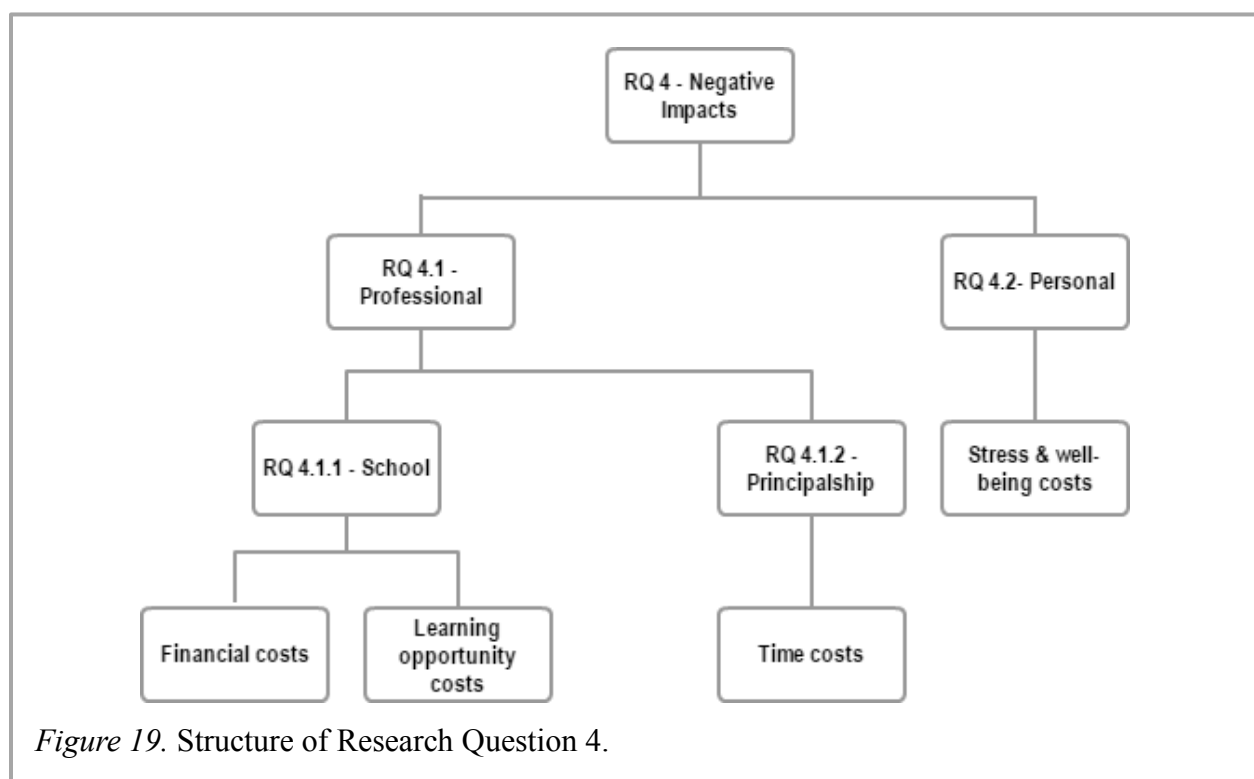


Figure 59. The legal environments of schools, showing details from the study findings.

#### **Research Question 4 — Do Tasmanian School Principals Recognise Any Negative Impacts From Their Dealings with Legal Matters?**

It is clear from the data that while principals' dealings with legal issues and actions to ensure that their schools comply with legal requirements constitute an important part of their work as school leaders, their involvement in legal matters can come at a cost, in both professional and personal terms. Negative impacts identified within principals' professional environment include the financial cost of obtaining legal advice, the time taken up in dealing with legal matters, as well as restriction of potential learning activities for students as a consequence of legal risk management. From a personal perspective participants have widely reported job stress attributed to a range of legally-related factors.

The data concerning this research question were collected from the on-line survey, the written comments provided on open-ended questions in that survey, and the personal interviews conducted by the researcher. The presentation of this data has been structured so as to address firstly, the professional impacts recognised by the study's participants, and secondly, the personal impacts of education law dealings. Presentation of the discussion is represented in Figure 19.



## **Professional Impacts of Legal Dealings**

Negative impacts, insofar as they may be reflected in both the professional and the personal lives of principals, demonstrate the pervasive and serious consequences that can flow from dealing with legal matters. The data collected for this research identified a number of negative impacts that may affect the individual leader's school and his or her principalship. Those negative impacts are examined in this section. Although the issues are addressed separately, it should be recognised that there is much overlap across them.

### **School-based impacts — Financial and learning opportunity costs.**

#### ***Interview data.***

The financial cost of obtaining legal advice was highlighted by several participants from the Catholic and Independent sectors. In relation to a protracted and complex legal matter Principal Kelsey leader of a Catholic school observed, “Hopefully it doesn’t happen too often, because the school foots the bill. And as you can imagine the amount of money involved, legal fees, starts to mount up.” (Personal communication, September 7, 2015) Principal Ainsley, the leader of a self-described “low fee-paying” small Independent school referred to, “expensive lawyers ... and then they charge you an arm and a leg.” (Personal communication, June 3, 2014) The issue of financial legal costs was also mentioned by Principal Sydney, head of a large Independent school with high educational advantage. In relation to the firm of lawyers who work for her school, Principal Sydney noted somewhat wryly, “They’re doing all right out of us.” (Personal communication, November 11, 2015) By contrast, as advised by Legal Officer Elliott (Personal communication, June 18, 2014) school principals in the government sector have access to legal advice from the DoE Legal Services Unit at no financial cost.

The negative impacts of the financial costs described by the interview participants may have *indirect* opportunity costs for students in the participants’ schools if the legal costs affect the teaching and learning budget. By contrast, a loss of learning opportunities for students as a consequence of misjudged legal risk decisions may *directly* affect the quality of student learning in a school. On this general issue System Leader Cameron observed, “Every time you take kids on an excursion there’s a whole lot of risk. I think we’ve got very risk averse here though, in Australia. That’s not always the best thing.” (Personal communication, October 5, 2015) That view was echoed, and expanded on, by System Leader Jersey, who noted:

What we stress all the time is “Please, the risk of risk assessment is that you won’t do things that you still need to do. Don’t let that happen; don’t let it stop kids doing things.”

That is the catch cry. But I’ve got a sneaking suspicion that it does; that it limits.

(Personal communication, June 24, 2014)

Principal Network Leader Frances gave an example of a positive educational activity which was cancelled because the risk of liability was considered too high in the circumstances:

There’s a need for this stuff [risk management], but it might be starting to limit the sorts of activities and interesting things we can offer. ... A primary school used to have a very good transition program with the local high school. The high school students used to come across and work with the students. But now because of legal issues around them not being able to walk across unsupervised, not being able to travel in teachers’ cars, that’s really cut back the effectiveness of that program. (Personal communication, June 24, 2014)

### **Principalship-based impacts — Time.**

The data for the study also revealed the extent to which busy principals’ time may be occupied in dealing with legal matters, the chaotic consequences for school management and leadership, as well as participants’ perspectives regarding such disruptions.

#### ***Survey data.***

Just as there was considerable variation in the survey data concerning the legal areas with which participants had dealings and the frequency with which such issues arose, there was also variation in the data in relation to the time devoted to legal matters each week by participants. Figure 61 provides a graphical representation of the survey results. One third of the sample reported spending a minimal time (less than one hour) each week dealing with legal matters while the remaining two-thirds were involved with legal matters for a greater time each week, with a mean time of 1 hour 54 minutes. This measurement is of course subject to the participants’ perception of what constitutes an *average week*, as well as their understanding of *legal issues*. Nonetheless it shows that education law occupied an important amount of the participant’s valued time.

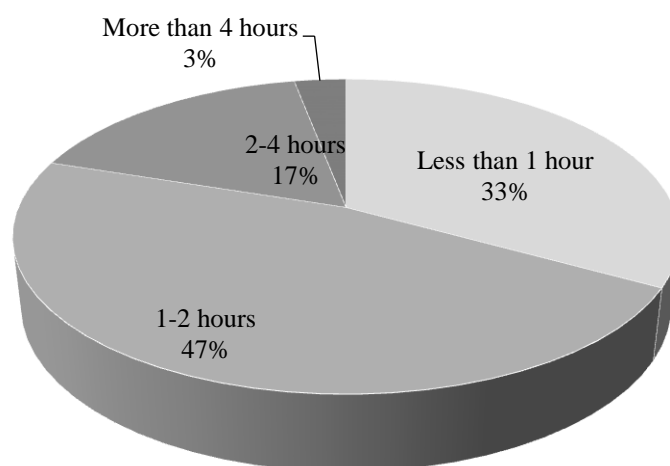


Figure 61. Principals' time spent on legal matters.

***Written comments from survey data.***

Survey participants also commented on the impacts of dealing with legal problems. Several pointed out that legal issues distracted them from more important tasks and for a considerable period of time. For example, “It removes my gaze from the main purpose of my work. The issues can be protracted” and, “Legal problems are often complex and require considerable research and time allocation in the midst of an already busy work day”.

***Interview data.***

Data from the interview phase presented a rich picture of the time spent by participants dealing with education law issues, as well as resulting feelings of frustration, and the temptation to institute a “quick fix” without benefit of expert advice. Perhaps most importantly, none of the participants asserted that legal matters were attended to simply and quickly with little impact on the school leader’s day. In fact just the opposite was reported. According to Principal Bailey, “While the focus is education ... the business of education is very time consuming.” (Personal communication, June 4, 2014) That view was echoed in the comments made by Principal Network Leader Frances:

So, there’s a lot of time, I guess, taken up by addressing this [legal] stuff. And I’m not saying that’s a bad thing; I’m just saying that’s the impact of having these things on the principal’s plate . . . . All this tends to soak up a lot of management time. (Personal communication, June 24, 2014)

Principal Network Leader Harper used the adjectives, “time-consuming, and unwieldy” to describe legal issues, but was also at pains to point out that this was not necessarily the case “for everybody or all the time”. (Personal communication, June 24, 2014) It did, however, seem to be the case for Principal Chris, in his description of the hand grenade-like effect of a legal problem on a principal’s day:

You just drop everything; you might devote the day to being on the phone or managing it through. That’s the other thing about dealing with these sorts of issues—it’s generally not something you can delegate too far. In terms of our time management and our capacity to do that, it just leaps to the top of your priorities. ... People need to see that’s what you’re doing; you’re getting on with it. (Personal communication, June 13, 2014)

A common theme expressed in relation to the time demands of dealing with legal problems was that such dealings take the school principal away from other tasks with the implication that these other tasks may have greater significance for the students, staff, and the school. Frustration resulting from distraction was also relevant to the levels of stress felt by principals around legal issues. The issue of legal issues as distractions was well-described by System Leader Jersey, who reported:

When you have distractions [of a legal nature], what appear to be distractions, that seem to be derailing you from what your core focus is, it can be frustrating. “I think I’m doing all of this, and I know my main focus has to be on teaching and learning. I know I have to be in classrooms, supporting teachers and kids’ outcomes — and I’m dealing with this”. So there is a level of frustration around it taking them away from the main game. (Personal communication, August 20, 2015)

Principal Clark expressed a similar view, “If we get too strung up on the law, it will take us away from our bread and butter. Yes, it’s important, but let’s make sure that we don’t lose sight of the fact of why we’re doing what we’re doing.” (Personal communication, September 8, 2015) Interestingly, Principal Network Leader Deb used the common terminology of, “core business” and “distraction” but saw a school leader’s legal obligations as, “things that probably should sit with someone else’s responsibility” (Personal communication, August 24, 2015), perhaps suggesting some discomfort with the legal role.

A slightly different perception was reported by Principal Logan in relation to legal dealings and the time they take. He noted the dangers of a quick fix approach:



It can't take up a huge amount, I mean, if you get it wrong it does. If you're on your own and make a decision without getting advice, then suddenly nothing else happens, would happen, for God knows how long. You can't do that. You can't act in isolation, and you do have to have the people who can give you that advice very quickly. (Personal communication, September 10, 2015)

He suggested principals should take more time, in order to save time in the long term.

### **Personal impacts of legal dealings.**

#### ***Survey data.***

The personal cost of dealing with legal matters measured in terms of principals' stress was addressed by a survey question that set out three separate statements about legal problems and stress, and asked participants to indicate on a five point Likert scale the degree to which they disagreed or agreed with each statement. The first statement was, "Legal problems in my school cause me to feel stress." The mean of the participants' responses was 3.19; the median and mode were also measured at 3 — meaning, "Neither agree nor disagree" or neutral. The responses followed a normal distribution curve, with close clustering around the mean (S.D. 0.87). The second statement presented to participants was, "Legal problems cause me more stress than do other management issues." The mean response was 2.97, with a median and mode of 3.0. The average value of the participants' responses fell just into the, "Disagree" area. The frequency distribution of this data was again normal, although flattened somewhat by the S.D. of 1.11. The final statement about legal problems and stress was, "The legal problems I deal with now cause me more stress than the problems I dealt with in the past." The mean value of the responses in respect of this statement was 2.9, a very slightly stronger measure of disagreement than for the second question, with a median of 3 and a mode of 2. The frequency of the, "Disagree" responses gave the distribution of this data a negative skew, with some flattening from the 1.08 Standard Deviation.

When considered together, the data showed some 39% of the participants indicated that education law problems cause them stress (although 19% disagreed); approximately 36% found legal problems more stressful than other management issues and the same proportion in disagreed; and 31% considered that their stress over legal matters had increased over time (with 42% in disagreement).

***Written comments from survey data.***

The impacts of education law problems on participants' personal lives were also the subject of written comments in the survey. Participants' expressed various negative feelings about dealing with legal matters using words like *anxiety*, *worry*, *inadequate*, and *underprepared*. Participants also commented that, "I feel alone and a bit of a target at times ... I have personally been abused assaulted and defamed" and, "A difficult parent/husband of an employee in the school who defamed me in a public domain over a few years. I never pursued any action against him but moved on." One participant noted that, "Following up the legal matters that result only adds to the stress". Several comments provided by the survey participants noted the difficulties for a school principal in living up to others' expectations, "Stress associated with negative community reactions and perceptions relating to legal issues and expectations that as a 'Christian' school you won't ever have any legal issues also personally impact me" and "Where a student or employee is impacted upon due to legal issues, this can impact upon me personally due to feeling that others may be judging my actions as excessive or harsh due to their not understanding the situation fully."

Several participants noted that difficulties experienced by students and staff resulted in levels of stress for themselves. For example, comments included, "I worry about the impact of the legal system on others at the school", "Family law matters are stressful and teachers wish to avoid appearing in court and parents want to involve them", and "The complexity of privacy and other legal issues including protecting children related to the growing social media world is an increasing worry." The comments made by participants also suggested that principals' level of stress may be influenced by relationships with the wider school community. For example, participants reported, "Getting it right legally is critical for the whole school", "Inevitably dealing with legal issues involves people — maybe colleagues or students or community members — with whom you may have a positive relationship", "School leaders are meant to be relational builders of community. Managing legal issues can rapidly erode this." and "There is a problem around balancing the needs of a complex community with the rights of individuals."

***Interview data.***

The interview data contained numerous references to negative emotional and mental impacts experienced by school principals as a consequence of their dealings with legal matters. Participants used terms such as *stress*, *fear*, *loneliness*, and *overwhelmed* to describe costs to

their mental and emotional well-being. A number of legally-related factors were identified as contributing to these negative impacts.

When they spoke about the mental and emotional demands of dealing with legal issues participants used several different descriptors. For example, Administrator Taylor referred to school principals having, “suffered psychological damage, having counselling and treatment for depression caused by that stress”. (Personal communication, November 10, 2015) Principal Sydney, however, described the principalship as, “a very lonely job”. (Personal communication, November 11, 2015) The theme of school principals’ isolation emerged strongly from the interview data. System Leader Cameron described feeling, “like you’re handling something on your own, or you’re the first person ever to get this particular problem” (Personal communication, October 5, 2015), while Principal Kelsey observed that, “As the principal you’re not able to share [information].” (Personal communication, September 7, 2015)

Several participants suggested that the negative impacts of legal responsibilities were of particular concern for less experienced principals. For example, Principal Network Leader Francis noted, “I think for a new principal, who’s being overwhelmed by a whole lot of stuff, starting out in the job can be pretty stressful.” (Personal communication June 24, 2014) System Leader Jersey also distinguished between the responses of more- and less-experienced principals to legal issues:

I’d say there would be some that would be very experienced or they would feel “I know what I’m doing about that; it’s happened to me before” or “I can get that information.” But there would be others, who are perhaps newer in the role, and they would feel that first grab of fear. “What do I do here? I don’t want to make a mistake.” (Personal communication, August 20, 2015)

As well as voicing concern about the effects of legal involvement on principals’ well-being, participants also suggested that such effects may be ameliorated by talking about their worries either to professional colleagues or to spouses or partners. Principal Clark provided a frank assessment of this need to share with someone:

I think having a good wife that you can talk about things with. I don’t talk to her about everything, but there are times she knows I’m not sleeping or whatever, and we’ll talk about “Well, here’s what’s happening”. Just someone to talk to; she may not even give me advice, just listen. And colleague principals are good like that too. I’ve got some good

people I'd call ... mates who I know I can talk to about anything. And I know if I needed them they'd be there at the drop of a hat. You need that as a principal because the job's very lonely, and there are some things you can't share with staff, but you need to share with somebody. (Personal communication, September 8, 2015)

### ***Experiences contributing to stress.***

Interview participants reported a broad range of experiences with legal matters they considered contributed to principals' stress. They raised issues related to many different aspects of school leaders' legal work with little thematic commonality other than their being aspects a principal is unlikely to be able to control. Those issues included: lack of legal knowledge; safety of students and staff; procedural unfairness; excessive responsibilities; and conflicting legal values.

#### *Legal knowledge.*

Participants pointed out that they experienced stress when faced with a legal problem to which they did not have the solution, although the people around them expected them to deal with it. Principal Network Leader Frances observed, "You sometimes get caught in a spot where you're not sure what to do, and then that can be a little bit stressful." (Personal communication, June 24, 2014) Principal Chris expressed a similar view, "People do look to us to have that information at our fingertips, and to have that capacity to, in a crisis situation when something goes wrong, to make a decision and take the correct path." (Personal communication, June 13, 2014)

At a much more specific level, participants suggested that a lack of familiarity with legal terminology as well as legal documentation also contributed to their levels of stress. As described by System Leader Cameron:

If it comes to an affidavit wanting documentation about enrolment, all those things are quite stressful if you're not used to those sorts of things. I would say it's one of the more significant stressors in their role. ... You immediately think the worst, and it's written in a language that's not always [familiar]. And then it needs somebody to interpret it for them and hence the escalation. (Personal communication, October 5, 2015)

Administrator Roger made a similar observation in relation to a principal receiving a legal letter of demand:

Almost all principals don't have a legal background, you know. So, there's no sense of "Oh, it's OK. We've done that in our business. A letter of demand's not to be worried

about.” They see that on the table and they think “Whoa!” (Personal communication, November 10, 2015)

*Safety of students and staff.*

The interview data revealed that concerns regarding student and staff safety were recognised by participants as an important causal factor for principals’ legal stress. Principal Network Leader Harper pointed out that, “People, who work in the field, work in the field because they want to teach and nurture children, so it’s fraught by definition.” (Personal communication, June 23, 2014) Participants identified some situations as especially problematic such as those concerning students (including child abuse, parenting, and child protection) and families (including violence and legal threats to staff, and the necessity to maintain a relationship with families following a difficult incident). These matters were reflected in the observations expressed by Principal Network Leader Harper:

One of the things that probably causes concern in schools ... is stuff around care of children and custody things, and even extending to child protection. Often if students need to be removed from a family situation the school is often the place where that occurs. And that can create lots of stuff for school staff to manage and deal with. . . .

Those sorts of things create lots of pressure for people on a personal level. And I think the responsibility that people have around that, and perhaps around mandatory reporting, so when students come to school and people understand that and see that something awful has happened to them, the impact on staff is quite severe, and for some principals is really significant. (Personal communication, June 24, 2014)

Although legal threats and violence were mentioned within the interview data as a source of stress for school principals, there were far fewer comments on those topics than on the safety of students. Nonetheless, threats of legal action as well as apprehended and actual violence are recognised as issues for principals. Administrator Roger pointed out that the involvement of lawyers in a grievance can cause feelings of stress for a school leader, “When parents start getting cranky and talking about, you know ‘My lawyer; here’s a letter.’ Then there’s a level of anxiety.” (Personal communication, November 10, 2015) Principal Network Leader Deb discussed violence as a cause of stress for principals:

There have been times when I’ve needed to, as a principal, get assistance from the police. But they’re rare; they don’t happen very often, thankfully. ... It can be really stressful, for

some people more than others, but again, it doesn't happen that often. Thank goodness – but it does happen, yes. (Personal communication, August 24, 2015)

*Injustice.*

Several principals from the non-government school sector offered an interesting perspective on their legal dealings with Fair Work Australia and the Fair Work Commission (the Australian national workplace relations tribunal). Participants observed that, regardless of the case, the result would be against the school. This was identified as causing stress, especially where the action involved an attempted termination of a teacher for poor performance. Principal Bailey noted, “It feels like that Australian labour laws are very much on the side of the employee.” (Personal communication, June 4, 2014) Principal Chris described his experience with the Fair Work Commission:

We lose. Even if there's substantial evidence, and even if you've followed the process absolutely to the letter of the law. In the end, when push comes to shove, you just run out of either money to continue to fight the case—it becomes a commercial decision— or the detriment it does to the community. I recently had an issue where I had to give way, simply because I had a need to protect students from being called in to a Fair Work Australia court of law to give testimony. So, I had to protect them, and that teacher was then able to put around the place that she had just decided to resign. To me the Fair Work situation can be the one that can be most debilitating. As you go into the war zone, you know that you're just not going to win, even if right is on your side. (Personal communication, June 13, 2014)

Principal Drew's observation was succinct, “We lose.” (Personal communication, June 13, 2014)

*Legal responsibilities.*

Within the general category of *legal responsibilities* as causes for principals' stress, participants identified several different factors including those which are externally imposed like statutory penalties and increased professional obligations, as well as those which may be internally generated by the school principal such as the need to reassure staff and the propensity to shoulder the blame for problems.

In relation to externally-imposed statutory penalties, Administrator Roger expressed the view that:

[Principals] get nervous because compliance is ... where there are monetary penalties of consequences of not doing it well. If I don't finish my Board report, OK the Board's not happy, or if I don't get the reports out on time the parents aren't happy. But if you don't get this right there's a \$150,000 fine. So I think that makes them nervous. (Personal communication, November 10, 2015)

While his perspective was from an Independent school setting, the same framework of penalties for individuals also applies to government and Catholic school leaders. The other externally imposed aspect of legal responsibilities that participants viewed as causing stress was simply that the legal obligations of principalship are continually expanding. Principals need to know more, and do more, law. As Administrator Taylor observed, "They [legal responsibilities] are increasing, and it's crept up on them [principals]. They do say that they're feeling that, very much so." (Personal communication, November 10, 2015)

The interview data also revealed causes of stress linked to legal factors subjectively imposed by school leaders themselves. System Leader Cameron commented on the dysfunctional assumption of guilt by school principals for legal problems that were beyond their control, "It's not about them. Often that's how principals seem to internalise it; they think 'It's something I've done, it's my fault.' I think that adds to the stress of it as well." (Personal communication, October 5, 2015) Principal Chris highlighted a different form of subjective assumption of responsibility, based on the expectations of leadership:

People do look to us to have that [legal] information at our fingertips, and to have that capacity to, in a crisis situation when something goes wrong, to make a decision and to take people on the correct path. ... People need to be kept emotionally safe as well. They need to be assured that you know what you're doing, and that they're not going to be jeopardised and the children won't be jeopardised. (Personal communication, June 13, 2014)

#### *Conflicting legal values.*

The final legal topic identified by participants as causing stress for principals involved decision dilemmas where two equally valid legal values were in conflict and the principal was unable to satisfy both. System Leader Jersey described this situation as trying to balance the needs of one kid against the needs of 450 kids in the school environment (Personal communication, August 20, 2015).

Principal Network Leader Harper had clearly given this issue some degree of thought and commented on the possible conflicts between every child's right to an education, and the right of each student and teacher to study and work in a safe environment with particular reference to children who were violent or exhibited other disordered behaviour:

That nexus between the Disability Discrimination Act and the Workplace Safety Act, for instance. The right of everybody to be safe in schools, but also the right of all children to gain an education. And that's a significant challenge, where you have kids with quite disordered behaviour. That becomes very stressful and very time-consuming for principals. ... The Department is very clear about that, that there's a right for all children to an education, and it's the responsibility of the Department to provide the best environment for that to happen. So both of those children have to have their needs met, and that's where the tension comes, when the need for safety clashes with the need for an education. But then it's our responsibility to find a way to put in measures to make adjustments so that both children can be happy and safe. (Personal communication, June 24, 2014)

#### **Summary — Negative legal impacts.**

A summary of study findings regarding negative impacts flowing from principals legal dealings is at Figure 62.

Negative impacts from principals' dealings with legal matters were considered under several different headings. Impacts for schools involved the financial costs (for non-government schools) of obtaining legal advice, as well as costs in lost learning opportunities when legal risk decisions are influenced by excessive caution. Data suggested that legal issues take up principals' time, and distract from their core function of instructional leadership. Impacts, as a consequence of principals dealing with legal matters, centered on legal stress. The quantitative data did not send any clear-cut messages. The qualitative data, however, presented a concerning picture of legal stress experienced and witnessed by participants.

*Figure 62. Summary of Research Question 4.*



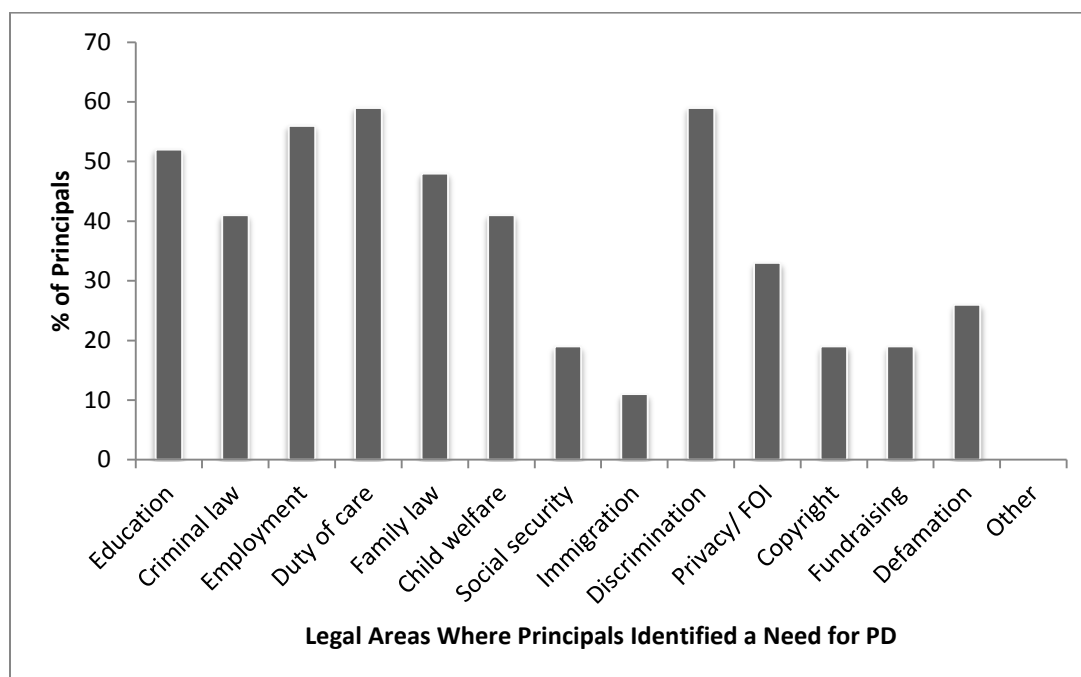
### **Research Question 5 – How Do Tasmanian School Principals Suggest Their Education Law Support Be Enhanced?**

The final research question for the study sought to discover the views of Tasmanian school principals about ways in which their legal support might be improved. The question did not presuppose any adverse judgement concerning present legal support arrangements (and, indeed, some participants felt no change was warranted) but simply asked for ideas to make the legal lives of principals a little easier.

#### **Survey data.**

Research Question 5 was specifically addressed by survey items that asked participating principals whether they would access education law CPD if it was available, the legal areas on which they would like such CPD, and where they saw the highest priority for such CPD. The initial item on this topic asked participants if they would access professional learning opportunities about education law and collected data using a five point Likert-style scale of: 1– Definitely would not, to 5–Definitely would. The mean value of participants’ responses was 3.94 (on the border between “Don’t know” and “Probably would”, with the median and mode both being 4.0 (“Probably would”) with a Standard Deviation measure of 0.92. The data were shaped in a normal distribution and clustered around the mean. When the individual levels of response were examined, the data presented a more decided message: 6% of the participants indicated that they would not take up education law learning opportunities; 16% were undecided; and a total of 88% responded that they probably or definitely would.

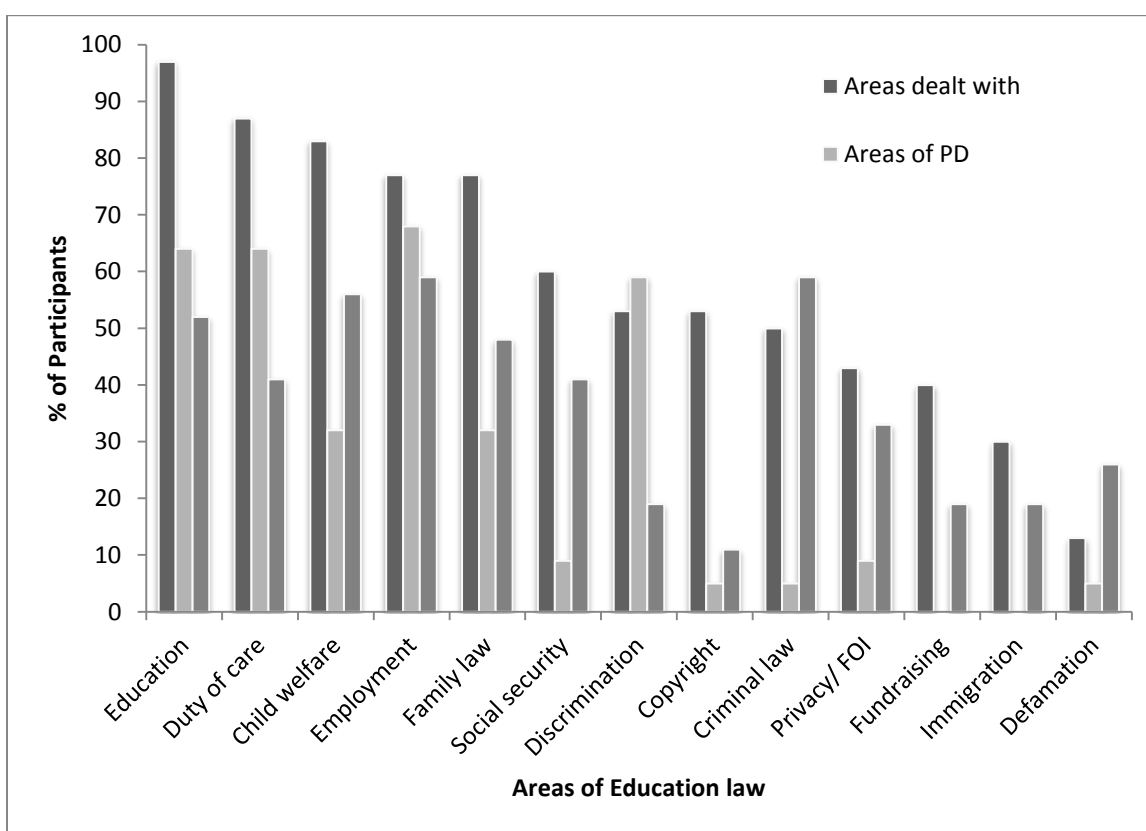
Participants who had answered neutrally or positively to the item about attending more CPD were also asked to select education law topics on which they would like to receive more CPD. The responses are set out in Figure 63. The data might usefully be seen as falling into two groups: topics on which 40 % of participants or more identified a need for CPD; and those nominated by less than 40% of participants. In the former group the topics included: duty of care and discrimination (59%), employment (56%), education (52%), Family law (48%) and child welfare and crime (41%). The topics selected by a smaller proportion of participants were privacy/FOI (33%), defamation (26%), social security, copyright and fundraising (19%), and immigration (11%).



*Figure 63.* The proportion of participants who were interested in CPD on legal topics.

Survey participants were then asked to select areas of education law training they would give the highest priority. Again the responses fell into two main groups. The topics selected as high priority by 15% of participants or more were: education; employment; Family law; duty of care; discrimination; crime; and child welfare. The topics prioritised by less than 15% of participants were: social security; privacy/FOI; copyright; fundraising; defamation; and immigration. These groupings closely reflected the data concerning the identified need for CPD, evidencing consistency in the participants' responses.

These response groupings also reflected the survey data discussed earlier regarding the areas of education law dealt with by participants. In Figure 64, the legal areas dealt with by participants are set against the areas of CPD need, and the areas of CPD received. It can be seen that in a number of areas, principals' legal work and their need for legal CPD exceeded the CPD principals received. This situation occurred, for example, in issues concerning child welfare, Family law, social security, copyright, crime, privacy/FOI, fundraising, immigration and defamation.



*Figure 64. Comparison of legal areas dealt with, CPD attended, and CPD sought.*

Participants were then asked about the ways in which they would prefer to develop their education law learning. Options provided in this item were similar to those used in questions exploring the information sources consulted by participants, although expressed in terms of training. The option that was most popular with participants was in-service training/CPD (67% of participants), followed by on-line learning (43%), training by lawyers (37%), and law manual/guidelines (33%). Support for the remaining options was limited: training by professional associations (13%), training by ANZELA (10%), university training (7%), legal texts or journals, and briefing notes (3%).

#### **Written comments from survey data.**

Following the survey items on additional legal CPD, participants had an opportunity to explain their responses. At the most general level, participants referred to weaknesses in their knowledge, for example: “I do not have any knowledge of the particulars of this legislation” and

“I have very little knowledge in this area”. However, when the participants referred to specific education law topics their reasons varied. In relation to Family law, participants highlighted a desire to maximise the safety and welfare of students and staff. For example comments noted, “Family law impacts children and how we deal with children from separated families” and “Increasing number of family separations, court proceedings and resultant impact on school staff”. The responses about employment and discrimination law focused on effective management, as in, “Areas that need absolute clarity around the management of situations within the student, staff and community bodies”. The legal aspects of education especially enrolments and absenteeism were relevant to participants because they were issues dealt with in schools, “on a daily basis”. One participant noted with particular candour, “As an open entry school but with finite resources, I would like to know more certainly what our legal as well as human responsibilities and requirements are with regard to enrolling students.”

Several participants also highlighted the topic of cybercrime as an area for priority CPD due to a perceived increase in schools. For example, “It is clearly a ‘growth area’ for students and schools”, “An ever-increasing issue in schools”, and “Increased instances of cyber-bullying and inappropriate use of technologies”. Although the comments made by participants focused on different aspects of school administration, two strong common themes were identified from the participants' reasoning. Those themes concerned firstly, the safety and welfare of members of the school community, and secondly, appropriate recognition of individuals' rights and entitlements.

### **Interview data.**

The interview data contained numerous suggestions from principals and other participants concerning ways in which legal support for Tasmanian school leaders might be enhanced. It must be recognised from the outset, however, that the data also contained views from some (government school) participants that their support was satisfactory and required no change. Several participants who voiced opinions about possibilities for improvement of the current education law arrangements made suggestions for change in relation to their own legal understandings, as well as the legal preparation of future principals. In addition, a number of participants pointed out the responsibility borne by a school principal for the actions of their staff and expressed opinions concerning the preparation of beginning teachers in education law.

***Principals' own legal knowledge.***

Participants across the three schooling sectors in Tasmania provided suggestions about ways in which legal support for principals might be enhanced. The reasoning behind their views was as varied as the proposals. Principal Jordan, the head of a government Grade 11 and 12 College focused on CPD to ensure currency of his knowledge, "I think that we certainly need to be up-to-speed on what our role is in the legal system. So I think we would probably participate if it was on offer." (Personal communication, August 28, 2015) Principal Morgan, a government special school principal, proposed more legal CPD for accountability reasons:

I think there's probably a lot of us working in the dark. ... I would be very keen to participate in some professional learning around this. We do work in the public eye; we are dealing with the public; we sometimes deal with frustrating parents. ... I think schools need some clear directions, particularly around examples where other schools have maybe got into trouble. (Personal communication, September 21, 2015)

Administrator Taylor, who worked with schools in the Independent sector, suggested that adoption of the Principal Certification process might assist school leaders to gain necessary legal knowledge as well as improve the public standing of the education profession generally:

I think that what AITSL are doing on Principal Professional Standards and the certification of that will certainly help matters. I think it helps, not only in the ability of school leaders to deal with these issues but it also, I think, enhances the standard of the profession, which probably has some implications for beginning teachers and teachers coming through. (Personal communication, November 10, 2015)

Participants' responses to Research Question 5, as to how principals could be better supported in terms of education law, fell into two fairly distinct categories: firstly, quite general observations directed toward improving legal support as currently provided; and secondly, specific suggestions of new approaches to education law support. The first category includes the slightly hazy proposal made by Principal Kelly that education law is:

One of those added things at work that we have to have at the back of our mind. If there was some simple way that we could develop an awareness of it ... I think that would be a good idea. (Personal communication, September 24, 2015)

Principal Jordan raised the possibility of tailoring education law information in light of the school context and particular legal environment:

The need for knowledge in some schools would be much more of a priority, because of maybe the demographic, or maybe the incidence of angry people coming in etc., small towns etc. So I think that for some of my colleagues, who work in some schools, they are presented with some volatile, angry community members – they probably need to be more *au fait* with the processes. But it's like anything; it's almost like, on a Need-to-Know basis. (Personal communication, August 28, 2015)

System Leader Cameron observed that information about legal responsibilities and obligations could prove overwhelming for school principals, which would be self-defeating, “You can't overwhelm them with law because they'll be frightened to step outside their office.” (Personal communication, October 5, 2015) One approach she advocated was to schedule professional learning about legal issues in “bite-sized bits” rather than a whole day at once. She went on to reflect, “What's the best practice? What can we do to ease some of the burdens on principals, without rattling them. ... You go to some of these seminars on legal matters – it just rattles them” raising the spectre of professional paralysis stemming from regulatory information overload.

In addition to suggestions for improving the current modes of support provided to school principals dealing with legal issues, several participants outlined novel proposals they considered might assist principals in terms of education law. Principal Kelly discussed the desirability of a policy document outlining various problem areas with legal consequences, and indicating critical points at which legal advice should be sought:

It would be good to have a framework that was accessible, to describe the territory if you like. Then for it to be Just-In-Time support. ... But you've got to identify ‘Well, that could be a legal problem, therefore I will contact Legal Services.’ Some form of flowchart, I suppose ... the various legal dimensions would be good. (Personal communication, September 24, 2015)

Taking a very different approach, Principal Kelsey voiced concerns about colleagues taking short cuts in mandated procedures and the need for ethical training to accompany the legal training. She commented:

The temptation is, in the circumstances, that you'll say ‘I could take a short cut because it would get me the end result I want. But following processes is time-consuming and also more difficult.’ So, often I think principals, the people who come unstuck, when they try

to achieve something by bypassing something or ignoring it, not following the letter of the law ... for example, interviewing—employment is a big factor. If you don't follow the process, which is clear and transparent and it works ... you could well be challenged. If it's someone's career or their livelihood and you don't follow the right process then they may seek legal advice. (Personal communication, September 7, 2015)

This issue brings into play aspects of both ethical and legal standards of conduct within principals' professional responsibilities. This is a matter addressed by the Tasmanian Code of Professional Ethics for the Teaching Profession (Teachers' Registration Board Tasmania, 2016) as well as the *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012b) which standards apply across all three schooling sectors. In addition, as Principal Kelsey correctly pointed out, such conduct may leave the principal's decision open to successful legal challenge before an administrative tribunal.

As well as the changes proposed by Principals Kelly and Kelsey, a further novel improvement was suggested, separately, by two principals from small, faith-based Independent schools classified as having medium to low Educational Advantage. Principals Quinn and Ainsley both expressed a desire for a scheme to provide them with access to legal advice without the necessity of consulting a private lawyer or law firm. Principal Quinn's proposal was brief, "We need an avenue in which we can say 'OK, I've got a question' and [find out] where I go for information." (Personal communication, October 14, 2015) Principal Ainsley provided more information about the arrangements she envisaged:

One thing I thought of that would be good, in terms of our, principals', education in law is to have a type of an avenue that you can access, without having to access the practicing lawyers themselves. A knowledge bank, maybe on-line; maybe a group of people you can see, maybe retired lawyers, who have something to give back to the community. ... Just to get answers on certain questions, without having to engage expensive lawyers ... for little schools.

A final issue which should be considered under possible improvements in education law support for school principals was raised by Administrator Taylor. She observed that where Independent schools have a leadership succession plan in place, the prospective school leader will likely undertake some leadership preparation training which would cover legal matters.

However:

There are some schools who just simply don't have the size or the capacity to do that ... and simply have to recruit from outside. ... Some of them [applicant principals] have that training and others don't. (Personal communication, November 10, 2015)

Regrettably, Administrator Taylor did not offer a solution to this problematic situation.

### ***Teachers' legal knowledge.***

Several participants offered opinions concerning the adequacy of the preparation received by pre-service teachers in education law. Initially it appeared that this data fell outside the terms of the study's research questions. On further consideration, however, it became clear that a school principal bears some responsibility for the knowledge and skills exercised by staff members employed in the school. If teachers lack a sound understanding of their legal rights and responsibilities, the principal will need to ensure that they receive training to an appropriate standard. As such the researcher was satisfied that the preparation of pre-service teachers in education law may be relevant to the work of Tasmanian school principals and the topic is discussed accordingly.

Six participants addressed the issue of the preparation of pre-service teachers in education law. One participant, the principal of a large Catholic school, did not express any dissatisfaction with the legal understanding of recently-qualified teachers:

I haven't had a huge concern about young teachers or new teachers having a great deficit regarding their [legal] responsibilities, but then again, we are a select employer, so we don't accept everyone that walks in the door. We probably have a skewed view. (Principal Chris, personal communication, June 13, 2014)

The remaining five participants (a lower EA Independent school principal, a higher EA school principal, a large Catholic school principal, a government school Principal Network Leader, and an Independent system leader) expressed varying degrees of dissatisfaction with beginning teachers' understandings of the law affecting their work. The reasons for their dissatisfaction are set out in Table 21. The participants listed in Table 21 were also asked about the legal areas which should be strengthened in pre-service teachers' training. Their responses centred around issues in relation to student welfare (child protection, mandatory reporting and risk assessment), and professional conduct (male supervision of female students).



Table 21

*Reasons Given by Participants Dissatisfied with Beginning Teachers' Preparation in Education Law.*

REASON FOR DISSATISFACTION	PARTICIPANT	SCHOOL SECTOR	QUOTE
Theoretical, not practical, knowledge	Principal Network Leader Harper (Personal communication, June 23, 2014)	Government	I'd say they have a theoretical basis, but I think the practicalities and what that means – what that feels like, looks like – isn't well developed, no.
Academic knowledge only	Administrator Taylor (Personal communication, November 10, 2015)	Independent	I think that anyone would say to you that the pre-service training of teachers could certainly be improved in going beyond the academic course matter.
Lacking depth of knowledge	Principal Ainsley (Personal communication, June 10, 2014)	Independent	It's not that they're naïve, not knowing anything [about duty of care], but whether it actually goes through all the levels of legislation that you are required to adhere to. There are some tricky areas where I think – 'Whoa, that teacher is exposed.'
Inadequate knowledge of recent legal changes	Principal Bailey (Personal communication, June 4, 2014)	Independent	My impression is that no, they're not necessarily well trained in the kind of legal requirements that have recently happened.
Inconsistent standard of knowledge	Principal Drew (Personal communication, June 13, 2014)	Catholic	I guess that I assume they know nothing, unless I can be convinced otherwise.

### **Summary – Enhancement of legal support.**

A summary of study findings regarding participants' suggestions for enhancement of their legal support is at Figure 65.

The findings regarding enhancement of principals' legal support was mixed (in terms of data type), and varied. Survey data focused on legal CPD for principals concerning the safety and welfare of school staff and students, and individual rights issues. Participants favoured in-service CPD. Many interview participants suggested that more legal CPD would be useful. They emphasised: contextually tailored learning; training conducted incrementally and over time; policy guidance on stages at which legal advice should be sought; the links between ethical and legal issues; the particular legal advice needs of small, less well-resourced Independent schools; and the issue of inconsistent legal credentialing. Weaknesses in pre-service teacher legal preparation were also raised as an issue.

*Figure 65. Summary of Research Question 5.*

## **Chapter 7 Overview and Chapter 8**

This chapter has presented findings in respect of Research Questions 2 to 5, concerning legal consciousness, legal context, negative impacts, and legal supports. In relation to Research Question 2, aspects of principals' legal consciousness equated law with several different concepts including safety, leadership, ethics and common sense. Those ideas may or may not be legally accurate. Research Question 3 concerned the legal environments faced by principals. The findings on this topic built on the model of schools' legal environments set out in Chapter 3 by providing instances of the external and internal legal environments recognised by participants. Research Question 4 addressed negative impacts flowing from principals' dealings with legal matters. The data identified such negative impacts on schools (cost of legal advice, and inappropriate caution in legal risk management resulting in sterilisation of students' learning), and on the principalship (the cost in time taken away from principals' instructional leadership role and the impact of legal stress). The final research question regarding the enhancement of principals' legal support produced mixed results. Survey data indicated that most principals were in favour of additional legal CPD, and felt it should be directed toward issues affecting the safety and welfare of students and staff, including legal rights issues. The interview data raised a number of issues in relation to improvements in legal support.

The next chapter is Chapter 8: Synthesis and Discussion of Key Findings. This chapter again uses the study's research questions as an organising framework. It presents a discussion of

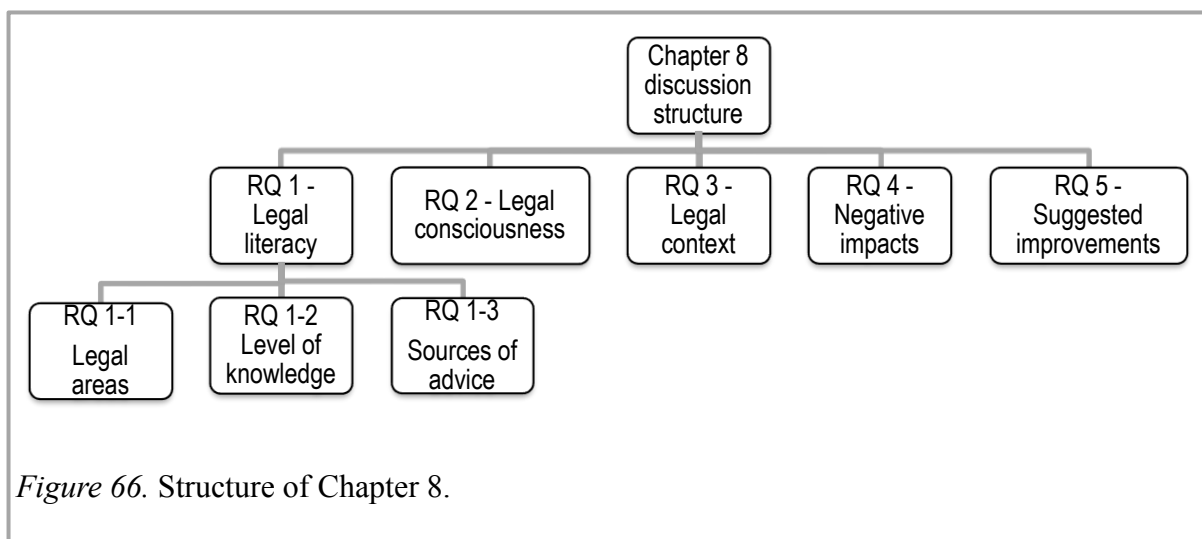
the research findings in light of the extant education law literature, previous empirical studies conducted both in Australia and North America, and the conceptual framework of the study set out in Chapter 3.

## Chapter 8

### Key Findings and Discussion

#### Introduction

The purpose of this study was to explore the impact of education law on Tasmanian school principals, particularly in terms of their legal literacy and legal consciousness, the legal environment within which they deal with legal matters, negative impacts that may flow from legal involvement, and their suggestions about how the current legal support might be enhanced. These topics formed the basis of the research questions for the study. Key findings in relation to those topics (drawn from Chapters 5, 6, and 7) are synthesised and discussed in this chapter. Those findings are considered in light of the existing body of knowledge concerning school principals and education law (reviewed in Chapter 2). The chapter also critically revisits the interim working model of the school's legal environment which has been used as the conceptual framework for the study (discussed in Chapter 3). The discussion provides the foundation for future action in terms of education law practice, policy, and research proposed in the following final chapter (Chapter 9). Reflecting the structure used throughout this thesis, the discussion is organised to reflect the research questions, as shown in Figure 66.



### **Research Question 1 — What is the Legal Literacy of Tasmanian School Principals?**

The first, and most challenging, research question posed in relation to this study concerned the legal literacy of Tasmanian school principals. It was addressed in terms of the following sub-questions:

- 1-1. What legal areas are dealt with by Tasmanian school principals?
- 1-2. What level of legal knowledge do Tasmanian school principals hold?
- 1-3. What sources of legal information and advice do Tasmanian school principals consult?

#### **Areas of law.**

It is clear from the findings that Tasmanian school principals who participated in this study had dealt with an extremely broad range of legal matters during their principalships. Many of these issues had occurred with little or no prior warning. The legal areas identified as occurring most frequently, across all schooling sectors, involved the safety and welfare of students and their families, and school staff. Those people, and others, populate the school's internal legal environment, as discussed in Chapter 3. These findings, made a decade or two after the previous Australian studies, closely reflect the previous research with Queensland school principals (McCann, 2006; Stewart, 1996b), as well as the studies from New Zealand (Wardle, 2006), Canada (Findlay, 2007b; Leschied et al., 2000), and the United States (Hillman, 1988; Magone, 2007; D. White, 2012).

Consideration of the findings of this study in light of the previous research suggests strongly that the general nature of education law matters dealt with by school principals in Western countries may be relatively constant and universal. This does not in any way deny that principals are faced with novel legal situations from time to time, but rather recognises that the legal problems of schooling exhibit a high degree of similarity across similar schooling systems. There are of course individual differences based on the school's legal environment, including the jurisdictional legal structure. Moreover, elements of the legal context of a school will wax and wane with changes in technology, social developments and the like, which must be taken into account. Nevertheless, it appears that school principals in Tasmania and elsewhere may face education law challenges that arise from a relatively settled suite of legal areas.

It does not follow from this observation that the content of any school principal's legal workload will be the same as any other. The legal issues that arise in any particular school will depend to a large extent on the internal and external legal environments, both of which are individual to that particular school organisation. The legal problems with which a principal must deal will be as unique as the school itself. The situation will, in all likelihood, be further complicated by the involvement of the school's primary stakeholders including students and their parents (and their past and present relationship with the principal, teachers, and the school as a whole) and staff members.

An aspect of this study that has not previously been expressly discussed in relation to education law, although the basic concepts can be found in earlier literature (Lunenburg & Ornstein, 1991; Stewart, 1996b; Stewart & McCann, 1999), is the environmental location from which legal matters arise. The findings of this study concerning the legal areas dealt with by principals suggest strongly that matters arise from both the external legal environment of the school (for example school registration, statutory requirements, and societal pressures), as well as the internal legal environment constituted by school stakeholders including students, parents, and staff (Connolly et al., 2017; Dragona, 2017; Fassin, 2009). The principals' core legal concerns involving safety and welfare arise predominantly, although not entirely, from this internal legal environment. These findings confirmed the importance of the school organisation legal environment as represented in the working model at Figures 30 and 59.

As was discussed in Chapter 3, this thesis adopted a systems approach to understanding the school organisation and its principal. That approach provided a particular lens through which the behaviour of the school and its principal may be considered and understood. It is acknowledged, however, that a systems perspective is not the only theoretical lens available. It is not without challenge in the literature, and its application directs the researcher toward some understandings, to the potential exclusion of other ways of addressing issues.

When an organisation like a school is viewed as an open-system (Lunenburg, 2010c; Stewart, 1996b; Stewart & McCann, 1999), its organisational boundaries are likely to be seen as permeable to the external environment (Di Paola & Tschannen-Moran, 2005; Lunenburg, 2010c; Starr, 2011), although the degree of permeability may vary according to the particular school and its context. Effective school leaders recognise the importance of the relationship between the school and its environment (Katz & Kahn, 1966) for obtaining resources, information, and

feedback (Di Paola & Tschannen-Moran, 2005; Weick, 1976). The literature suggests that successful organisational leaders maintain a level of continuous monitoring at the boundary between the organisation and its external environment. This environmental scanning (Boyd, 2016; Pfeffer & Salancik, 1978/2003; Rallis & Goldring, 2000) ensures the leader becomes aware of any change in the environment that may constitute an opportunity or a threat for the organisation, so that action can be instituted to *bridge* or *buffer* the environment (Bush, 2017). Bridging involves engagement with the change, whereas the literature describes buffering as the exercise of control over as many system elements as possible (Di Paola & Tschannen-Moran, 2005; Goldring, 1995) in order to limit the impact of the environmental change. In relation to the school's external legal environment, environmental scanning may allow a principal to proactively manage changes to the regulation and compliance regimes, institute action to resolve a dispute at its earliest stages, and if unsuccessful, seek expert legal advice as soon as appropriate.

These findings regarding education law issues arising from the school's legal environment, and the role of the school principal as mediating activity at the boundary of the school organisation and the external elements, are consistent with the conceptual framework set out in Chapter 3. They add to the theoretical base of education law research in schools.

### **Level of legal knowledge.**

It is widely accepted that school principals need some legal knowledge in order to fulfil their legal responsibilities appropriately. This is now recognised by the *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012b). Matters that may impact on a principal's legal knowledge include the following:

- legal preparation and development;
- levels of legal confidence;
- the accuracy and adequacy of legal knowledge; and
- sources of legal information.

### ***Legal preparation and development.***

Preparation and development of school principals in relation to education law has some impact on their overall capacity to deal appropriately with legal matters. The findings in this study revealed a very low rate of tertiary legal study among participants. The proportion of participants

in this study who had undertaken university-level legal study was lower than reported in previous Australian research (McCann, 2006; Stewart, 1996b). This general absence of tertiary legal training may be a cause for concern. It is possible that a principal of a Tasmanian school may have had as little as three hours formal training in relation to education law, typically received as a pre-service teacher.

However, the research, both in Australia and overseas has not yet established a clear causal connection between tertiary training in education law and the adequacy of principals' legal knowledge. Despite higher levels of tertiary legal study reported by the Stewart (1996b) and McCann (2006) studies in relation to Queensland school principals, both researchers found their participants' levels of legal knowledge to be inadequate. Even in the United States, where pre-license tertiary education law study is State-mandated, research still finds that school principals lack adequate legal knowledge (Eberwein, 2008).

One aspect that was identified from the findings of this study involved the legal knowledge of principals coming to Tasmania from another Australian jurisdiction or from overseas. It is acknowledged that, in the main, Tasmanian law is generally comparable to that in other Australian States and Territories and these school leaders could, over time, obtain knowledge about Tasmanian legal requirements through CPD. Nonetheless, there is no specific legal resource available to familiarise newly arrived principals with Tasmanian law at the outset of their practice in this State. Legal familiarisation materials may assist such principals in their professional practice and reduce the risks of inappropriate legal decisions based on a lack of local knowledge.

A further aspect for noting is principal reluctance to undertake legal training. Most principals in this study, across all three schooling sectors, reported having attended legal CPD in the previous year, although a considerable proportion of older principals had not. This quantitative finding from the study survey was supported by the qualitative interview data, suggesting that some very experienced principals were of the view that they had sufficient knowledge (and admittedly, a sound legal support framework to call on) and neither wanted nor needed extra training. This finding appears not to have been reflected elsewhere in the literature. However, the participation of older principals in CPD is important on two counts. Firstly, it enables more experienced principals to update their previously acquired knowledge and secondly, it provides an opportunity for them to share their experiences with younger principals.



As such, it could be argued that all school leaders, but especially those more mature principals, should be encouraged to undertake legal CPD.

### *Levels of legal confidence.*

This study collected data from survey participants regarding their level of confidence in relying on their own legal knowledge. Almost 60% reported feeling a positive level of confidence. That level of confidence was not matched by the assessed accuracy of their legal knowledge. The results from the legal knowledge questions in the survey indicate the participants' level of legal knowledge was limited, suggesting that some principals may have been over-confident about their own legal knowledge. This issue of legal over-confidence has not previously been addressed in Australian education law literature or research. This lack of alignment between principals' self-perceived confidence and objectively-assessed knowledge level has been raised in some studies from the United States ( e.g., Andrews, 2012; Burch, 2014), but, thus far, has only been addressed in any detail in the Canadian research conducted by Leschied et. al., (2000) and Findlay (2007a).

Over-confidence, by itself, is of limited interest. It is widely understood that people are subject to making mistakes (Etzioni, 2014; Sacchi & Burigo, 2008; H. Simon, 1956), and many tend to over-estimate what they know (Alba & Hutchinson, 2000; Asaad, 2015; Dunning et al., 2004). Further, a high level of self-confidence in one's own knowledge and judgement can sometimes be a very worthwhile attribute (Luthans, Luthans, Hodgetts, & Luthans, 2001; Picone, Dagnino, & Mina, 2014; Pillai, 2010). The literature on organisational decision making suggests that in situations where accuracy in decision making is important, as may be the case with many legal issues, unwarranted over-confidence in one's own knowledge or judgement can contribute to a decision maker relying on his or her own intuition or judgement when it is inappropriate to do so (Strahilevitz, Harvey, & Ariely, 2015), and not seeking expert advice despite that course being appropriate (See, Rothman, & Soll, 2010; Tost et al., 2012; Yaniv, 2004). The findings of this study have shown that some school principals rely on their own legal knowledge, or that of their colleagues — both of which may well be inaccurate — rather than seeking decision support from a more legally-expert source. This disposition is confirmed by the literature.

*Accuracy and adequacy of principals' legal knowledge.*

The discussion now moves from the principals' subjective view of their legal knowledge to a more objectively-based assessment. In terms of the legal knowledge questions in the survey, participants in this study demonstrated a limited knowledge of Tasmanian discrimination law. The participants' mean score on the legal knowledge questions fell short of the 70% proficiency level generally applied in education law research. Catholic and government school principals scored higher than did Independent school leaders. Despite improvements in training technology, information access, legal training opportunities available to Tasmanian principals, and the requirement for legal knowledge expressly stated in the *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012b), the overall results on the accuracy of principals' legal knowledge found in the present study, were generally equivalent to the knowledge levels of Queensland principals reported by Stewart (1996b) and McCann (2006). The findings in the present study also fall within the range of results from the American, Canadian, and African research base.

The accuracy of principals' legal knowledge determined by a survey-based legal knowledge test is a matter of interest for education law research and may provide grounds for reassessment of school leader education law preparation and development arrangements. However, it is problematic whether the grade achieved by participating principals on the knowledge test provides a complete picture of their legal knowledge. Although this study assessed the accuracy of participants' legal knowledge using survey knowledge questions, the results need to be treated with caution, for the reasons explained in Chapter 5.

The qualitative model proposed within the literature (and advocated by a number of participants in this study) is in contrast to the tradition of quantitative education law research which has relied on the results of a legal knowledge test. The qualitative approach does not require the achievement of a proficiency score, but instead suggests that a principal should have sufficient basic legal knowledge to deal appropriately with most routine education law matters that arise within a school, and understand the need to seek support when appropriate. This perspective has been discussed both in Australia (Stewart & McCann, 1999; Sungaila, 1988) and in the United States (Gallant, 2004; Redfield, 2003). The latter element of the qualitative approach (a principal understanding when it is appropriate to seek decision support) introduces a fundamentally important concept of the school leaders' legal support network (Bonaccio &

Dalal, 2006; Kausel et al., 2015; Meissner & Wulf, 2014), which has traditionally been discussed in terms of the disparate legal sources consulted by the school principal in the course of dealing with legal matters (e.g., Eberwein, 2008; Findlay, 2007a; Kallio & Valadez, 2002; Stewart, 1996b).

### ***Legal sources.***

Following the lead established by previous Australian research (McCann, 2006; Stewart, 1996b), this study sought information from participants regarding the sources of legal information they consulted when dealing with legal issues. Reflecting the findings from a previous study conducted by the researcher (2011; 2012), adaptations were made to the standard approach of using only one survey item in relation to possible sources of legal information. In this study participants were asked to identify information sources they had consulted on routine legal matters, in addition to those used in non-routine situations. This approach produced two pictures of school principals' advice-seeking that were similar in content, but different in emphasis. Based on those findings the researcher developed the notion of a legal support framework, consisting of separate, but often interconnected, elements available to provide decision support to a principal. This research suggests the mix of decision support consulted by a principal will be contingent on the context of the legal problem (including the parties involved and the seriousness of the likely consequences), the principal's own internal state, the accessibility of sources within the legal support framework, restrictions like time and money, and so on.

As was found in this research, a school principal who is faced with a routine legal issue may consider that it is sufficient to rely on their own knowledge and experience perhaps augmented by a check of relevant policy, the views of a colleague, or a law handbook if available. The literature suggests that such decision making may be appropriate for quick decisions on structured problems within a relatively stable environment (Bazerman, 2006; E. Collins et al., 2011; Heyden et al., 2013). For non-routine matters which fall beyond the principal's previous experience and may have the capacity for serious long-term consequences, it is likely that a principal may seek the support of systemic or school advisers and consult a lawyer if required (E. Collins et al., 2011; Heyden et al., 2013; Sacchi & Burigo, 2008), as was found in this research. And of course there will be every position in between. Depending on the context, a principal could move around their legal support framework and consult sources of support appropriate to the situation involved.

It will be recalled from the discussion in Chapter 3 and the findings made on the research questions for this study, that the school organisation, has both an internal and external legal environment from which it gains resources and from which legal issues may arise (Lunenburg, 2010b, 2010c). The principal, as a legal decision maker practicing within a legal support framework, similarly seeks decision support from his or her own internal resources, such as his or her legal knowledge and perhaps legal consciousness (Bazerman, 2006; Matthews & Crow, 2010; Sergiovanni, 2009), and from the external environment, including colleagues, policy, law manual, system school advisers, and lawyers (Arendt et al., 2005; Robson, Jack, & Freel, 2008; Yaniv, Choshen-Hillel, & Milyavsky, 2009). The concept of a principal making legal decisions with the support of a legal support framework is consistent with the legal environmental models at Figure 30 as discussed in Chapter 3, and Figure 59 set out in Chapter 7.

A support framework emphasises the multitude of connections among the principal and those who provide legal decision support. Lawyers within the framework would be connected not only to the focal principal but also to principals from other schools within a system, as well as to specialist advisers who would be expected to respond to emerging issues by amending policies and guidelines. System lawyers would be responsible for the law handbook, and would synthesise information gleaned from legislation and judicial decisions. Administrators may act as gate-keepers controlling access to lawyers' advice. In short, the actors and resources form a complex legal support framework surrounding and supporting the individual principal in making legal decisions (Dalal & Bonaccio, 2010; Schrah et al., 2006). Importantly, as this research showed, a principal's legal support framework may be used differently from one legal issue to another. The sources constituting the legal support frameworks will differ among principals, among schools within a system, and among schooling systems. The constitution of the frameworks will inevitably change over time as principals' levels of experience grow, legal requirements change, school policies are amended, and novel issues arise (Arendt et al., 2005; McDonald & Westphal, 2003; Sniezek & Van Swol, 2001).

It is also important to recognise that in relation to many of the legal matters that arise in schools, principals may choose to rely on their own or a colleague's legal knowledge, in the belief that such knowledge is accurate and adequate (Lunenburg, 2010a, 2010c; Lunenburg & Ornstein, 2012). And, as found in this study, previous Australian research (McCann, 2006; Stewart, 1996b), and education law studies across the world (Eni & Arit, 2016; Findlay, 2007a;

Singh, 2015), the accuracy of their legal knowledge may be limited. As such, the research points to its being important that school leaders participate in continuing professional development to improve the standard of their knowledge, that they have reasonable access to a sound legal support framework, and that they recognise the need in some circumstances to seek decision support from sources more legally expert than themselves (Arendt et al., 2005; Bonaccio & Dalal, 2006; Schrah et al., 2006). It should also be acknowledged by parties interested in the education law that principals may face dispositions (for example, over-confidence) and practical barriers (for example, lawyers' fees) that potentially militate against their seeking legal decision support (Blackburn et al., 2010; Mole, 2016; Tost et al., 2012).

Given the very real limitations to principals' personal legal knowledge as identified in this research and elsewhere, and the importance of the legal decision support they receive from legally-qualified and non-legally-qualified advisers and resources, it is suggested that the capacity for legal decision making within a school should be considered holistically rather than focused only on the principals' legal knowledge test result. Such an approach would take the results of a legal knowledge test into account along with principals' legal consciousness (discussed in the next section), but also look at the decision support available to the principal through his or her legal support framework.

### **Research Question 2 — What is the Legal Consciousness of Tasmanian School Principals?**

This study has made findings concerning the legal consciousness of school principals. Legal consciousness is a concept adopted from research in the field of law and society (D. Cooper, 1995; Halliday & Morgan, 2013; Merry, 1990) but not previously discussed in the education law literature. It relates to the beliefs held by non-lawyers (such as school principals) about the law and its operation (Ewick & Silbey, 1991-1992; Hoffmann, 2003; Nielsen, 2000). The legal consciousness findings made in this research revolved around principals' beliefs that the law would not apply to certain kinds of acts that were carried out for some higher motivation. For example, if they were done in the interest of safety; or because they were ethical; or made good sense; or were good for the school.

As is the case with a principal's knowledge *of the law*, beliefs *about the law*, like those that were revealed in the course of this study, may or may not reflect the provisions of the law. But whether or not they are legally accurate, it appears that they may, to some degree, influence principals' legal decision making. As such the findings of this research suggest that principals'

legal consciousness should be investigated to ascertain if, and to what extent, those beliefs provide schemas or interpretative frameworks for principals' legal decision making. The present study has highlighted legal consciousness as a potentially new aspect of school principals' legal decision making, which warrants further inquiry. Should future research find matters of legal consciousness to be relevant to principals' dealings with legal issues, then legal consciousness may be taken into account, alongside principals' legal knowledge and legal support frameworks, when considering the adequacy and accuracy of principals' legal decision making.

### **Research Question 3 — What is the Legal Environment Faced by Tasmanian School Principals?**

This study found that Tasmanian school principals' dealings with legal issues have been impacted by a diverse and varied, and constantly changing, set of influences located both within the schools' internal legal environments as well as their external legal environments. These findings were in accord with the conceptual framework set out in Chapter 3. Internal factors identified in this research as relevant to principals' legal dealings involved matters concerning the primary stakeholders of the school (students and families, staff and others) such as the demands of legal risk management (Starr, 2012; Stewart, 2005; Zoellick & Frank, 2005), the legalisation of schooling, especially the willingness of disgruntled stakeholders to threaten or indeed institute legal action (D'Cruz, 2016; Hayne, 2000; Williams, 1994; 1995), and the general rights awareness and activism of internal stakeholders (D. Butler & Mathews, 2007; Cumming & Mawdsley, 2005/2006; Wright & Melville, 2004; c.f. Wolff, 2013). External factors identified by participants included matters from the international arena, national concerns, Tasmanian State issues as well as issues relating to the education sector in Tasmania. These examples reported by participants of the day-to-day influences on their legal practice were consistent with the interim working model proposed in Figure 30 of the Conceptual Framework (Chapter 3), and were used to provide further elaboration of the model in Figure 59 (Chapter 7).

Previous Australian research acknowledged the impact of a number of internal environmental factors including: legalisation and legal risk management (Stewart, 1996b); and the influence of the faith community (McCann, 2006). However, neither study investigated these environmental influences further or viewed those issues within a wider conceptual framework. In doing so, the present study has extended existing knowledge about school principals and education law, and offered a more complete environmental model for understanding the external

and internal legal environments of school principals' legal decision making. This approach may be of future assistance for education law research, training and principalship practice.

This research has examined the impact of law on schools and school principals through the lens of systems theory. That conceptual framework has supported an understanding—but not the only possible understanding—of schools as open systems with permeable boundaries (Aldrich, 1979/2008) between themselves and their external environments (as discussed in Chapter 3). This permeability allows elements and change from the environment (Chubb & Moe, 1988; Thurlow, 2005) to influence the behaviour of the school organisation in general, and the school principals' legal decision making in particular (Aldrich, 1979/2008; Lunenburg, 2010b). It is clear from the findings in this study that schools in Tasmania regardless of whether they are government, Catholic, or Independent share many common influences arising from their internal as well as their external legal environments. Common influences from the internal legal environments may involve their primary stakeholders and legal issues affecting them. Those from the external legal environment may include statutory and judicial compliance requirements, gradual social changes, and transformational events.

Notwithstanding such shared environmental influences, it is important to recognise that every school has its own individual legal context (Guthrie & Schuermann, 2010; Lunenburg & Ornstein, 2012) that reflects among other things: its mission; the community it serves; its history and background; and the experiences and backgrounds of the school principal, students and their families, and staff. Within each school organisation the school leader can be expected to place differing priorities on the various legal environmental factors (Cummings & Worley, 2014; Pfeffer & Salancik, 1978/2003; Weick, 1976) and make decisions to bridge or buffer the environmental changes (Bush, 2017; Di Paola & Tschannen-Moran, 2005). As shown in the present study and supported by the model in Chapter 3, the considerations and decisions made by one principal are unlikely to exactly match those of another school leader. This research has made it clear that neither the internal nor the external legal environment of any school remains static (Fassin, 2009).

The findings from this research have also highlighted the impact on principals' legal dealings of the organisational nature of the school. In the complexities of contemporary education a school is not simply an educational institution (Glatter, 2006; Tronc, 2009). Rather, it operates to provide education within a multi-layered legal and normative framework. For

government schools that framework includes many forms of regulation, including the State public service standards for State employees. For non-government schools, their provision of education services may be framed within the corporations' law, or the structure of a faith community. These critical contextual elements may be seen as elements within the school's external legal environment as shown in the models at Figures 30 and 59, or perhaps even additional layers of environmental influence that add to the complexity of legal influences on the school and its principal. In seeking to understand how legal matters are dealt with in a particular school, this research suggests that the legal decisions of the principal' should be considered in light of these school's legal environmental factors.

#### **Research Question 4 — Do Tasmanian School Principals Recognise Any Negative Impacts From Dealing With Legal Problems?**

The present study identified several direct and indirect negative consequences flowing from participants' dealings with legal matters. These consequences were discussed in terms of negative impacts to the school, including: the financial costs paid by non-government schools to obtain legal advice; and the sterilisation of learning activities from an application of an inappropriate standard of risk, as for example the banning of high school science students from carrying out chemistry experiments (Zirkel & Barnes, 2011). Issues related to principals' personal and professional lives were also noted, such as the time consumed by legal issues and the levels of stress involved.

From this range of consequences, only the topics of time and stress had been addressed in the previous Australian research (McCann, 2006; Stewart, 1996b; Teh, 2008). The findings in the present study, as to both the time taken up by dealing with legal matters and the levels of stress self-identified by participants, were noticeably lower than those reported by Stewart (1996b) and McCann (2006). This may have resulted from differences in principal preparation and development between Tasmania and Queensland; the adequacy of the legal support frameworks surrounding many of the participants in the present study; or particular characteristics relating to the principals, their schools and their internal and external legal environments. The available data does not provide any firm explanation for the variation in findings. Even though the numerical measures of time and stress in this study were less than the findings made in previous research, the qualitative data collected in this project emphasised the importance of the identified costs for the principals and schools involved.



Taking a broad view of the consequences reported in the present study, the impacts may fairly be characterised as both direct and indirect costs to the school organisation. The most straightforward of these is likely to be the financial cost incurred by non-government schools in obtaining legal advice from lawyers in private practice. Where the school is seen as an open system, as is the case in this research, the cost of obtaining legal advice becomes a resource-dependency issue (Ballantine & Spade, 2011; Lunenburg, 2010b; Thurlow, 2005) in which the cost is weighed against the likely benefit, judged in light of the values and priorities of the school (Shavell, 1988). Clearly the impact is likely to be felt more keenly by small schools with limited resources, but it effectively constitutes a cost incurred by all schools that seek legal advice from private legal practitioners in the course of their school operation. That is not to say that seeking a lawyer's advice is appropriate or required in every legal situation. As has been shown by the present research, it is not always necessary for a principal to seek expert legal advice from a lawyer on every legal issue that arises. In relation to many routine legal issues that have been successfully dealt with previously and where the law is relatively stable, the school leader's personal legal knowledge may well be sufficient, particularly if the principal's legal decisions are made following consultation with policies, a law manual, and functional specialists from the principal's legal support framework.

As confirmed by this study, it is highly likely that there will be occasions when seeking advice from a lawyer and paying the cost of their professional fees proves to be necessary. For example, obtaining expert legal decision support from a lawyer may be prudent when the regulation and compliance requirements are changing or unclear, if the issue raises untested legal problems, where there are multiple parties involved, or the possible consequences are serious. Even in such circumstances there are, however, options that can be pursued by schools seeking to limit their legal costs. The most practical course may be for a number of schools to enter into a group legal service arrangement with a law firm for the on-going provision of advice at a reduced cost (see the discussion in Appendix H). Resolution of any legal problem may always be facilitated by the school principal having a sound personal base of accurate legal knowledge (Gallant, 2004; Redfield, 2003; Stewart & McCann, 1999), as well as access to a comprehensive legal support network.

The other costs identified by this study (sterilisation of learning activities, and principals' time and stress), are important issues for the core activities of the school. They also represent

important feedback for the school as a legal organisation (Lunenburg & Ornstein, 1991; Martz, 2013; Stewart, 1996b). In terms of the school's core activities, those negative impacts have relevance for teaching and learning within the school and the principal's responsibility as its instructional leader (Catano & Stronge, 2007; Nardone, 1999; Ross & Cozzens, 2017). Through a misapplication of the principles of legal risk management or an unfounded fear of litigation, principals may unnecessarily remove valuable student learning opportunities from the school program, and hence adversely affect the students' learning experiences. The time taken by a principal to deal with legal issues may impact on the school leader's capacity to undertake other important leadership roles, and the quality of teaching and learning in the school may suffer as a consequence. If the legal stress experienced by a school principal reaches an unhealthy level (Maxwell & Riley, 2017), then the negative impacts on their well-being are likely to affect the principal's ability to lead the school's teaching and learning.

In organisational terms, such negative impacts are not simply costs of principals' legal dealings, but rather constitute feedback on the operation of the school's legal system, as discussed in the conceptual framework in Chapter 3. Excessive legal caution, stress, or even time spent dealing with legal issues may be an indicator that the principal's personal legal knowledge is inadequate to deal with a legal problem, that the nature of a problem may be one where expert advice is appropriate, or that it may have been appropriate to seek expert legal decision support at an earlier stage of proceedings. Failure to heed such feedback messages and institute some corrective action may affect the future operation of the organisation as a whole (Bush, 2011; Hanson, 1985; Lunenburg, 2010b, 2010c). These forms of feedback may be addressed by improving the accuracy of principals' legal knowledge through principal preparation and development, strengthening principals' legal support frameworks to ensure school leaders can access sound legal decision support as required, and assisting principals to appreciate when it may be appropriate to seek expert support from lawyers. These matters are considered in this study in relation to the final research question: *How do Tasmanian school principals suggest their education law support be strengthened?*

There may be some basic level of time and anxiety challenges related to principals' dealing with legal matters. This may be unavoidable, simply because the principal is the school's legal decision maker and they are not lawyers. Nevertheless, it is clear that negative impacts,

which are ultimately likely to affect the students and staff of the school, should be limited wherever possible.

### **Research Question 5: How Do Tasmanian School Principals Suggest Their Education Law Support Be Enhanced?**

The findings of this study concerning principals' suggestions for improvement of their legal support largely reflected the previous Australian research (McCann, 2006; Stewart, 1996b, 1997, 2005), as well as recommendations made in studies from the United States (Brabrand, 2003; Eberwein, 2008; Singh, 2015; D. White, 2012) and Canada (T. Cooper, 2011; Findlay, 2007b; Scarfo, 2010). In the broadest terms, those findings proposed strengthening principals' legal preparation and development, as well as legal training for teachers and pre-service teachers (Eckes, 2008; Gajda, 2008; Wagner, 2008). The findings of this study indicate that the priority for additional training should be given to the core legal topics identified throughout the study. Those topics focus on the safety and welfare as well as the legal rights, of students and their families, and school staff. In particular, participants in this study suggested that legal professional learning should: be offered on an in-service or online basis; be shorter, more tightly focused, and more frequent; use real-life scenarios; and emphasise the stages when it may be appropriate to seek expert legal support. All these matters have been raised previously in education law research. This proposed improvements to principals' legal support identified by participants in this study, suggest that the legal education arrangements for school principals in Tasmania may still have some way to go to meet evidence-based standards.

In the course of this research, many (although not all) participants with extensive and comprehensive knowledge of the principalship in the State reported areas in which principal legal preparation and development, as well as principal support networks, could and should be strengthened. This data was collected from principals, principal network leaders, senior system leaders, and administrators, from across the three education sectors. It is important feedback for all levels of the schooling system (Chapter 3 noted critical elements regarding the role of feedback for an organisational system). Additional legal training and decision support for principals will impose financial costs and a toll in terms of time and training resources on principals, schools and schooling systems that may prove to be challenging in the short term. But it would be appropriate to measure such costs against the longer term benefits of better quality legal decision making on the part of principals (McCann, 2006; Stewart, 1996b), the recognition

and protection of legal rights of students and their families, and schools themselves (Eberwein, 2008), the assessment of legal risk in academic and co-curricular activities to ensure both that personal safety is not compromised and that student learning is maximised (Starr, 2012), and the operation of schools that are “orderly, productive and humane” (Wagner, 2007, p. 6) and likely to educate responsible and inclusive citizens (Shariff, 2004).

It is likely that schooling authorities in Australia have been, or should have been, aware for some time of the professional and personal impacts on school principals caused by legal stress. Such stress is contributed to, at least in part, by weaknesses in principals’ legal preparation and development, and their legal support frameworks. It can be argued that there is at least an ethical obligation, (in addition to any legal responsibility under Workplace Health and Safety legislation), on credentialing authorities such as universities, and employers, to provide appropriate levels of training and resources to reduce the legal element of job stress within the principalship. By doing so, they may contribute to principals’ wellbeing and help to ensure that school leaders do not suffer physical, emotional, or psychological injury.

This study has shown that the legal responsibilities of contemporary school principals arise from a broad range of legal areas and are not always of a routine nature. The legal knowledge held by an individual principal needs to be basic, but accurate. A Tasmanian school principal does not need to become a lawyer. They should know enough about the law to appropriately deal with most routine, recurrent problems, and understand when to seek support in dealing with other issues (Gallant, 2004; McCann, 2006; Redfield, 2003; Stewart, 1996b). Most decision makers in the business world do not make important, complex decisions in isolation. Decisions of that nature are more usually made in light of advice received from others within, or outside, the organisational structure (Bonaccio & Dalal, 2006; Kausel et al., 2015; Meissner & Wulf, 2014; Tzioti et al., 2014). In fact the literature suggests that advice-seeking is the predominant means for senior personnel to acquire information for strategic decision making (Heyden et al., 2013; Meissner & Wulf, 2014; Yaniv, 2004). It is unrealistic to expect a school principal who does not hold a legal qualification to make decisions regarding novel and complex legal issues, with the likelihood of serious consequences, and perhaps involving multiple disputing parties, without appropriate legal decision support. The research (based in Australia and elsewhere) strongly suggests that every school principal should have access to a formal legal

support framework, which includes up-to-date information resources together with qualified experienced functional specialist advisers and lawyers.

The importance of providing appropriate and adequate training is not limited to individual principals and their schools, but may have longer term impacts on the future recruitment of principals from the profession. It is clear from the literature that the legal responsibilities and workloads of school leaders may contribute to reluctance on the part of potential principals to take on the role of school leader (Lock & Lummis, 2014; Pollock et al., 2015b; Thompson & Piazza, 2015). This study has found that inadequate personal legal knowledge on the part of principals, together with restrictions and limitations in their legal support framework, increases legal job stress on principals. Perceptions of legal job stress in the principalship may contribute to a potential candidate deciding not to pursue promotion (Cranston et al., 2003; Klocko & Wells, 2015; Pont et al., 2008).

The results of this study have highlighted the need for a coordinated, whole-of-career approach regarding the education law preparation and development of school principals. This is by no means a new suggestion. In the Australian context, both Stewart (1996b), and to a greater extent McCann (2006), recognised that the training and experiences of future school leaders during their time at university as pre-service teachers and within the teaching profession, contribute to the legal knowledge and beliefs that those individuals bring with them on entry to the principalship (Eberwein, 2008; Findlay, 2007b; Wagner, 2007). In Tasmania there is little evidence of coordination in principal legal education, contrary to both the values embodied in the *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012b) and the *Charter* (Australian Institute for Teaching and School Leadership, 2012a). While sectoral factors will always need to be taken into account, the small size of this State and its population of school leaders may make a coordinated approach to education law training an achievable goal. Such an objective would require input from many bodies, including the UTAS Faculty of Education, the DoE Professional Learning Institute, the TCEO and relevant professional associations such as the Tasmanian Principals' Association, the Association of Heads of Independent Schools Australia, IST and the ANZELA. A coordinated program and curriculum of legal professional learning, beginning at the pre-service teacher stage (Eckes, 2008; Wagner, 2007), and built on by teacher CPD (Newlyn, 2006; Schimmel & Militello, 2007), principal preparation, and principal CPD, would go a considerable way to providing the relevant, collaborative, future-focused, and

continuous (Australian Institute for Teaching and School Leadership, 2012a; Getenet et al., 2013) legal training and development required by school leaders in this State.

### **Conceptual Framework**

Having examined the key findings of this study within the structure of the research questions, it is appropriate to shift focus briefly to review the conceptual framework adopted for the research and its contribution to the study. As will be recalled from Chapter 3, this research adopted a conceptual framework of interlinked concepts, theory, and research (Rocco & Plakhotnik, 2009) about systems and organisations to facilitate exploration of the impact of education law of Tasmanian school principals. Schools were understood as open systems receiving inputs from, and providing outputs to, their environments. That systems perspective from organisation theory underpinned the previous scholarship of Lunenburg and Ornstein (1991), and Stewart (1996b) about schools and the law (see Figures 14 and 15).

This study advanced the theoretical understanding of the impact of law on schools and their leaders by developing an “environmental map” (Goldring, 1995, p. 287) of the internal and external legal environments of schools. This model reflected elements identified in the literature (see Figure 30) as well as matters raised in the data collected for this study (Figure 59). In terms of the internal legal environment the school’s main legal stakeholders were identified, as well as important internal developments such as legal risk management, and legalisation. It is from the school’s internal stakeholders (Connolly et al., 2017; Dragona, 2017; Fassin, 2009) that many of the legal issues in the school arise. The internal stakeholders also occupy much of the school principals’ concerns and legal dealings.

Contemporary school principals’ focus is not, however, only directed inwards. The principal must at the same time face outwards to deal with influences on the school from its external legal environment. That external context constitutes the remaining element of the model at Figure 30. Previous writers in education law (Lunenburg, 2010c; Lunenburg & Ornstein, 2012; Stewart, 1996b; Stewart & McCann, 1999) have acknowledged the impact on schools and their legal decision makers, school principals, of legal requirements laid down in statutes by Parliament as well as in judges’ case decisions. Those influences remain central to the operation of education law. However, this study has also acknowledged the influence of a wider range of governmental and non-governmental factors which may also be important for legal decision making in schools. Such factors include transformative change agents, universal human rights

issues, business and faith-based considerations, social movements and the operation of interest groups. These elements are included in the model at Figure 59.

Internal and external legal environments within which a principal practices are not static. They will vary between principals, schools, and schooling systems, as recognised in the findings of this study. Further, the decisions taken by principals when dealing with legal matters will result in organisational consequences that provide feedback regarding the school's legal systems. This too, was reflected in the findings from this research.

The conceptual framework described in Chapter 3, and particularly the environmental model (in Figures 30 and 59) provided theoretical concepts which assisted the researcher to gain a more comprehensive understanding of the impact of education law on schools and school principals than would otherwise have been the case. It is acknowledged that the environmental model developed in this study is by no means a complete representation of the interlinked internal and external legal environments of the school. It is hoped that the interim model proposed in this study may be further developed by future researchers.

## **Chapter 8 Overview and Chapter 9**

This chapter presented a discussion based on the key findings from this study concerning Tasmanian school principals' legal literacy and legal consciousness, the legal environment in which they make decisions as educational leaders, negative impacts that may flow from their dealings with legal issues, and suggestions regarding the enhancement of current legal supports. Those matters were considered in the context of the literature (reviewed in Chapter 2), as well as the open-system conceptual framework set out in Chapter 3.

The next chapter (Chapter 9) is the final chapter of the thesis. It presents a brief review of the study, together with a discussion of conclusions drawn from the findings, and the limitations of the research. A number of suggestions are then made, for research, practice and policy.

## Chapter 9

### Conclusions and Recommendations

#### Introduction

In this final chapter the research questions are reviewed, together with the methodology used to address those questions. A number of conclusions are drawn in relation to the research as a whole, and the limitations of the study are re-examined. The chapter closes with a discussion of recommendations for future directions in terms of practice, policy, and research.

#### Research Purpose and Questions

The research purpose of this study was to explore and describe the impact of education law on government, Catholic, and Independent school principals in Tasmania. In order to meet that purpose a general overarching question was established: *What impact does education law have on Tasmanian school principals?* In addition, a series of specific concrete research questions and sub-questions were developed concerning principals' legal literacy (encompassing areas of law dealt with, their level of legal knowledge, and their sources of legal support) and legal consciousness, the legal environments of their schools, negative impacts from legal dealings, and principals' suggestions for enhancing their legal support. The research questions provided a structural framework throughout the study. They gave focus to the research design, the conduct of data collection and analysis, and the development and discussion of the research findings. The research questions now remain central to consideration of the conclusions and recommendations of the study.

#### Research Methodology and Methods

This study was undertaken within a classical American Pragmatism paradigm using mixed methods methodology. The research design developed to address the research questions was a concurrent triangulated, mixed methods design (Alavi & Habek, 2016; Cresswell et al., 2003; Tashakkori & Teddlie, 1998). It consisted of two main phases conducted (generally) at the same time, composed of quantitative data collection, analysis, and findings, and qualitative data collection, analysis and findings, with mixing only at the final conclusion stage. The qualitative phase was given priority over the quantitative phase (quan + QUAL).

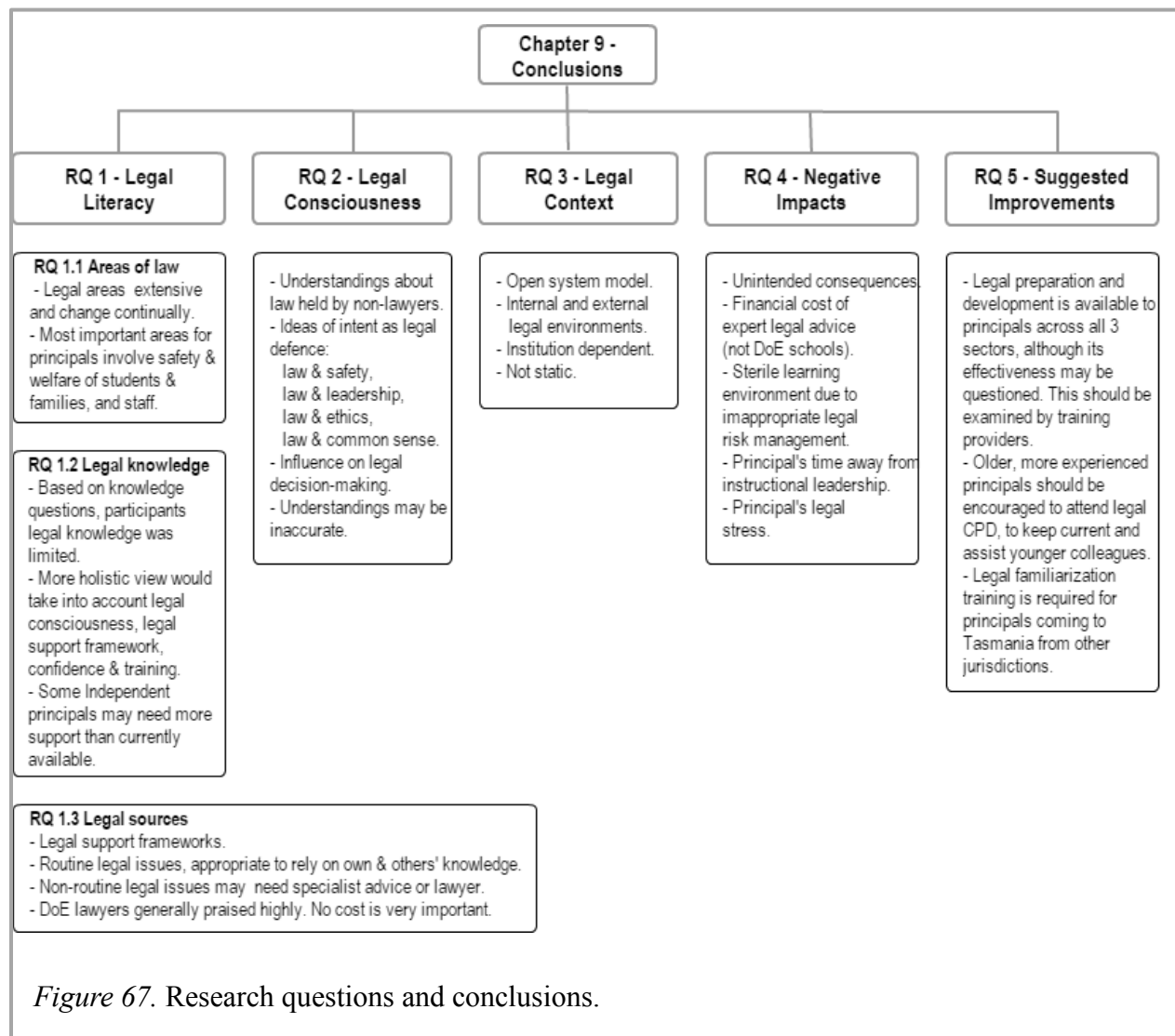
Quantitative data for the study were collected using an on-line survey, from appointed and acting Tasmanian school principals. Survey items for this study were developed by the



researcher, but were based in part on instruments used in previous Australian research (McCann, 2006; Stewart, 1996b). The main source of qualitative data for the study was a series of semi-structured interviews conducted by the researcher with school principals, principal network leaders, senior system leaders, administrators, as well as an education law lawyer.

## Conclusions

The research questions for this study and a summary of conclusions about them are set out in Figure 67.



## Research Question 1 — Legal literacy.

### *Areas of law.*

It is apparent from present and previous education law studies that the legal areas dealt with by Tasmanian school principals are not static. Issues can arise in relation to virtually any aspect of the law, and the law itself is continually changing through legislative activity and judicial decision making. There is, however, a range of legal areas that principals across the three education sectors recognised as impacting their schools. Within that range are core issues with which principals are most concerned, relating to the safety and welfare of students and their families, and school staff. Those legal areas include: education; duty of care (negligence); child welfare; employment; Family law; and discrimination. These are the matters foremost in principals' considerations, and reference to them recurred throughout the study. However, the requirement for a principal to deal with a legal matter may arise without warning, and on any legal topic. Some legal issues may have serious consequences for the parties involved, and may prove exceptionally time-consuming and highly stressful for the principal, as well as potentially damaging to the effective management of the school organisation. In circumstances such as these a school leader may need access to a legal expert who can provide sound legal decision support.

### *Level of legal knowledge.*

It has become normative in Australian, American and Canadian research in relation to school principal's dealings with legal matters for participants to be asked a series of legal questions in a survey, with the aim of assessing the accuracy and adequacy of their legal knowledge. Despite the wide adoption of this *knowledge test* approach, the literature reveals considerable variation in the format and legal content of the questions used. In the present study a set of twelve legal questions were developed by the researcher, based on Tasmanian anti-discrimination legislation, which were answered by participating school principals as part of the study's on-line survey. The results indicated that, generally, the participants' legal knowledge was limited. This assessment accorded with the findings of studies conducted in Australia and North America. Neither the sample overall, nor any sectoral grouping of participants, met the accuracy score of 70% that is generally accepted throughout the literature as indicating legal proficiency.

However, unlike previous research, the determination of a pass/fail judgement on the participants' education law knowledge was not the prime objective of this study. It was

considered that school principals' detailed understanding of law, either on a single focused topic or across a broad range of areas, may be an important element of the education law picture but should not be the sole matter to be taken into consideration. Principals' dealings with legal issues may also be influenced by their legal consciousness, the legal support framework through which they can obtain legal decision support, their confidence in their own knowledge and disposition to seek advice, and the legal preparation and development they have received. All these aspects should be taken into account when considering the adequacy of school principals' legal understandings.

### *Sources of legal support.*

Many education law studies have investigated the sources of legal decision support consulted by principals when dealing with legal matters. The findings of this study suggest that such sources constitute a framework of legal support for principals, which can be used in different ways depending on the circumstances surrounding the legal problem. For routine legal issues that are basically familiar and occur within a relatively stable environment, many principals seek support based on proximity and ease of access, such as their own experiential knowledge or intuition; policies and manuals that are to hand; or the knowledge and experience of a colleague principal. Principals may also reach out to a lawyer for advice in such circumstances, with convenience and cost being factors that are important for some principals. In relation to non-routine legal matters, however, when the decision environment may be turbulent, this study has found that the legal expertise of professional advisers within the framework becomes more important with school leaders more likely to seek decision support from lawyers or experienced specialist staff.

In this study government system participants expressed very positive views in relation to the advice and information provided by the DoE lawyers from the Legal Support unit. Participants praised the ease of access to the lawyers, the timeliness of the responses received, and the clarity of the advice provided. This standard of working relationship is not commonly reported in education law literature. It is also unusual that school principals can seek legal decision support directly from legal experts, particularly without incurring a financial cost. The value of these arrangements to government school principals cannot be overstated.

Another issue relating to principals' legal support framework concerned generalist and specialist systemic staff who provide legal decision support to government and Catholic school principals. This also relates to professional staff within Independent schools who may advise

their principal on legal matters within their specialist areas, although it is recognised that not all Independent schools employ such advisers. The value of such support to school leaders has been highlighted in studies conducted both in Australia and overseas. However, other than a handful of research projects focusing on the legal knowledge of superintendents in the United States, a search of the education law knowledge base does not reveal any investigation of the accuracy of the legal knowledge held by such staff, or the source of their expertise. This issue might usefully be addressed in future research.

The present study has found that, even though their knowledge of the details of discrimination law may be limited, Tasmanian government and Catholic school leaders are well served by a comprehensive legal support framework when they deal with existing, or potential, legal issues. As such, it is considered that broad-scale remedial intervention in the form of additional or compulsory legal CPD is not warranted in either system at this time. Given the growing importance of education law in the work of Tasmanian school principals, it is to be hoped that the legal support frameworks will continue to be resourced at an adequate level.

This study has been the first of its kind to address the impact of education law on school principals within the Tasmanian Independent school sector, and has indicated that the accuracy of some Independent principals' legal knowledge may be more limited than that of their government and Catholic school colleagues. It is suggested that further research should be undertaken in relation to the education law preparation and development of Tasmanian Independent school principals to ascertain if there are aspects of their legal education which may warrant review. The findings of the study also suggest that some Tasmanian Independent school principals may face additional challenges in dealing with legal matters due to weaknesses in their legal support frameworks, including a lack of on-going relationship with a legal adviser, the financial impact of legal fees; lack of systemic staff advice; ad hoc legal policies and the absence of a law manual. Well-resourced and networked Independent schools have taken steps, themselves, to deal with such issues. The findings of this study that suggest that further research should be undertaken regarding the adequacy of legal decision support available to, and used by, principals from less well-resourced Independent schools.

### ***Legal confidence.***

The issue of school principals' confidence in their own legal knowledge has been raised in a small number of North American education law studies. As was the case in those studies, this

research similarly concluded that Tasmanian principals' levels of confidence in the accuracy of their own legal understandings did not align with the results of the knowledge questions they answered. This finding, of itself, was of limited interest. It gained relevance when considered in light of the extensive scholarship relating to organisational decision making. That literature suggests strongly that over-confidence in decision makers' own knowledge is likely to reduce the extent to which they seek out, and take into account, advice from others. If that is the case with principals' legal decision making behaviour, then such over-confidence may limit the benefits available from access to a legal support framework, with possible consequences for the quality of principals' legal decisions. Although the findings of this study go only to recognition of participants' possible legal over-confidence, the impact on decision making support and quality are matters that may usefully be addressed in subsequent research.

### **Research Question 2 — Legal consciousness.**

In addition to examining the accuracy of Tasmanian principals' formal legal knowledge this study adopted the notion of *legal consciousness* from the scholarship of law and society. Legal consciousness refers to understandings about the law developed by non-lawyers. In the present study, a number of participants (principals, educators, and administrators, all of whom lacked legal qualifications) expressed their understandings about certain forms of behaviour they believed to provide a shield or defence, even against legal liability. It is suggested that the understandings embodied in legal consciousness should be identified and taken into account by education law researchers, in that they may, implicitly or explicitly, constitute the whole, or part, of the basis for school principals' legal decision making and may bear little or no connection to the requirements of the law in the statute books and judges' decisions.

### **Research Question 3 — Legal context.**

This study explicitly adopted an open systems view of school organisations and education law, which perspective conceptualised the school and its legal decision maker (the principal) as subject to both an internal and external legal environment. When the findings of the study were considered in light of the research and literature on organisation theory it became apparent that the contemporary Tasmanian school leader sits within a complex web of legal influences. Some of these environmental elements are direct and obvious (for example, legislation, judicial decisions, and litigation) and are acknowledged throughout education law research and literature.

Other aspects, such as the influence of environmental change agents, have received very limited research and scholarly consideration. In light of the open system view of organisational behaviour, the findings of this study suggest that the legal environments of a school organisation may be particular to that institution, and dependent on the actors and relationships involved. Further, such environments are not fixed. Over time, particular elements may wax and wane in importance or even disappear, new influences may arise, and actors may take on different roles.

#### **Research Question 4 — Negative impacts.**

Throughout the literature on education law, writers have emphasised the benefits of managing a school in accordance with legal principles, pointing to the protection of individual rights, students' safety, maintenance of good order, and the like. This study did not dispute those attributes. However, this research found that the application of education law within schools may bring with it some unintended consequences that require consideration. Perhaps most obvious was the financial cost attendant on obtaining expert legal decision support, or indeed representation where a matter may be litigated. Meeting such costs may be challenging for any school, although Tasmanian government schools have the enviable advantage of being able to access the DoE Legal Services unit at no cost. For a non-government school with limited financial resources such a cost may place pressure on the budget for teaching and learning, and the student experience may suffer as a result. Alternately the school principal may choose to forego legal advice in circumstances where it may otherwise be considered appropriate. This is an issue which has not been addressed in previous Australian research.

The impact of skewed legal risk management was also raised by participants in this study. There was no suggestion that educational legal risk management, a concept pioneered in education by Stewart (1996), is anything but a positive management tool. However, when the risk decision is made on the basis of an inaccurate understanding of the law of negligence or an unrealistic fear of litigation, unnecessary cancellation or sterilisation of potential learning experiences for students may result. This issue has been examined in the North American education law literature, but not previously in Australian research.

Principals' time consumed by dealing with legal matters, and school leaders' job stress connected with education law, are both research topics addressed in previous Australian studies (McCann, 2006; Stewart, 1996b). Measures reported in this research in relation to time spent on legal matters were lower than those reported by Stewart (1996) and McCann (2006), although

the qualitative findings indicated that the issue was nonetheless of concern to study participants. It is the qualitative findings on this topic that extend the Australian education law knowledge base. Participants accepted the time consumed by legal tasks as a necessary component of the modern principalship. However, there was a widely-expressed perception that legal issues constitute a distraction, taking principals away from their core function of instructional leadership. Without venturing into the debate of educational management versus leadership, it is nonetheless important that this viewpoint be recognised. The overall significance of principals' legal tasks, and the balance with other responsibilities, may be a matter addressed more fully in principals' preparation and CPD.

The present study also contributed to the education law knowledge base in relation to school principals' legal stress, through a qualitative consideration of situations that participants associated with legal stress rather than a listing of legal topics as in previous studies. Situations highlighted as stressful by participants in this research ranged from unfamiliarity with legal processes, to the "heroic" expectations of a principal held by the school community. While the situations varied dramatically they shared a common underlying theme, of the school leader being, or feeling, unable to exercise control or determine a particular outcome. It may be that additional training, or simply some awareness of this issue may assist principals in managing legal stress.

### **Research Question 5 — Suggested improvements.**

The *Professional Standard* (Australian Institute for Teaching and School Leadership, 2012b) explicitly acknowledged the importance of education law in school principals' professional practice, and this is likely to be reinforced by the Standard-informed certification process (Principals Australia Institute, 2015). Nevertheless, currently in Tasmania there is no comprehensive, coherent education law training regime for school principals. Although there are a broad range of legal preparation and development opportunities available, they are largely system-specific, sometimes conducted on an ad hoc basis, and with no comprehensive, shared curricular content.

Future school leaders across the three sectors are briefly introduced to a limited number of basic education law concepts during pre-service teacher training at UTAS. In the event that an aspiring or appointed principal undertakes a Masters of Education (Teaching) degree at UTAS that material will be addressed again. There are also a wide range of principal preparation

programs available to Tasmanian principal aspirants that may address education law issues, to a greater or lesser degree. Following appointment the DoE and the TCEO, as well as IST and other training providers, conduct professional development for school leaders which may address legal issues. In relation to specialist education law training, Tasmanian principals can study at a postgraduate level with tertiary institutions in other Australian states although the uptake of these opportunities appears to be limited. Outside of university studies, Tasmanian principals can attend training in Hobart, the Tasmanian capital city, conducted by members ANZELA, as well as education law seminars organised by commercial training providers. The findings from this research suggested strongly that tertiary study undertaken by Tasmanian principals in education law was not found to be especially valuable, and training materials in general tended not to be used by principals as on-going references. This finding would seem to warrant consideration by education and legal training providers.

Further, the findings of this study indicated that some older, more experienced, Tasmanian school principals may not be attending CPD to the same degree as their younger colleagues. The findings also indicated that these principals generally felt confident about their legal knowledge. Indeed they scored relatively well on the legal knowledge questions. To that extent, legal CPD may not be as relevant to them. Nonetheless, from a professional perspective, they should be encouraged to participate on the basis that the law is continually changing and they need to keep their knowledge up-to-date. Further, it presents an opportunity for them to share their background in dealing with legal matters with less experienced colleagues. Another group of principals identified in this study as having a particular need for focused education law professional development are school leaders coming to the jurisdiction from elsewhere in Australia and overseas. There is no formal requirement for these principals to attend a legal orientation to familiarise themselves with the provisions of Tasmanian law, although this may be specified by an employing school or system. This issue is not one that has been addressed in the Australian research or in education law generally. It may be a topic for investigation in a further study.

### **Limitations of the Study**

This study used two separate samples from which to collect data. In both cases the samples were not randomly constituted and as such cannot be generalised to wider populations. The study, however, was intended to be exploratory in nature rather than definitive, and to that extent the



lack of formal generalisability represents less of an issue than might otherwise have been the case. Additionally, the on-line survey was undertaken by a small sample of Tasmanian principals, which militated against its wider representativeness. The comprehensive nature of the interview phase has, to some degree, compensated for the lower-than-hoped-for response rate. Despite lacking a statistical basis for applying the findings beyond the boundaries of this study, the results may be of interest to principals and education authorities in other Australian States and Territories, as well as in overseas jurisdictions.

No data were available from lawyers who advise Tasmanian Catholic and Independent school principals. Their perspectives may have contributed to a more complete picture. The survey did include a series of legal questions designed to indicate the participants' legal knowledge. The weight that can appropriately be accorded that specific data is, however, limited. Levels of principals' legal knowledge would ideally be considered on a wider, more holistic basis.

### **Recommendations for Future Action**

Having drawn conclusions in relation to each of the research questions for the study, it is now appropriate to make recommendations for the future, in terms of education law practice, policy, and research based on those conclusions.

#### **Education law practice.**

This study has been grounded in Tasmanian school principals' legal practice and does not recommend broad-brush, wholesale changes to the education law arrangements as they presently stand. That is not to suggest that the study did not reveal any areas of weakness but rather, as is the case with most research, the recommendations need to be treated with caution, taking due account of the varied contexts within which school operate.

- Principal preparation and development should focus on the core areas that impact the safety and welfare of students and their families, and school staff: education; duty of care (negligence); employment; discrimination; and Family law (with particular emphasis on Family law).
- Principals with the most experience should be encouraged to participate in legal CPD so that they maintain currency of their legal knowledge and are available to share their experiences with younger principals.

- Legal familiarisation CPD should be provided specifically for principals coming to Tasmania from elsewhere to equip them with basic knowledge of education law in this State.
- Arrangements should be put in place to facilitate reasonable access to a lawyer for all Independent school principals, perhaps through a group legal service hosted by a professional association.

One further matter does not constitute a recommendation for change, but rather a suggestion toward maintaining the status quo. The government system participants in this study made it abundantly clear that their ease of access to legal support from the DoE Legal Services unit and the quality of that support is critical to their legal decision making at the school level. They considered the Legal Services unit to be a vital element of their legal support framework. It is suggested that the existing legal support arrangements continue to be supported.

#### **Education law policy.**

In Tasmanian education, all three schooling sectors have policies in relation to a broad range of legal topics. Those documents constitute a vital source of legal decision support for school principals. This study has not produced evidence to warrant change to that situation. It may, however, be valuable to address negative impacts flowing from principals' dealings with legal matters in the drafting of legal policy, and to highlight stages of processes at which support from a lawyer should be considered.

#### **Education law research.**

This study has been the first major education law research conducted in Tasmania and builds on a limited base of previous research, much of which is now several years old. It has also been the first Australian education law study to examine the impacts of dealing with legal matters on government, Catholic and Independent school principals. But this research has, by definition, been exploratory in nature. It is to be hoped that further researchers might take up some of the ideas raised by the study and add to the growing knowledge base of education law in this country. As such, a number of recommendations are offered for consideration.

- Principal legal decision making should be investigated within the context of the school's external, as well as its internal, legal environment.

- The adoption of a broader interpretation of principals' legal knowledge should be considered. Such a perspective would include the available legal support framework, the individual's legal consciousness and legal confidence, in addition to the results of any legal knowledge test.
- Further research should specifically address the legal preparation and development of Independent school principals.
- Further research should be undertaken on school principals' legal consciousness, and its impact on legal decision making.
- Further research should be undertaken on school principals' legal confidence, and its impact on legal decision making.
- Further research should be undertaken concerning the legal knowledge, training, and experience of systemic specialist staff advisers.

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## Appendices

## Appendix A - Ethics Approvals

### Appendix A1

#### HREC Approval (H 13262) – 23 May 2013

Social Science Ethics Officer  
Private Bag 01 Hobart  
Tasmania 7001 Australia  
Tel: (03) 6226 2763  
Fax: (03) 6226 7148  
Katherine.Shaw@utas.edu.au




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HUMAN RESEARCH ETHICS COMMITTEE (TASMANIA) NETWORK

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23 May 2013

Professor Neil Cranston  
Education  
Private Bag 66

Dear Professor Cranston

Re: MINIMAL RISK ETHICS APPLICATION APPROVAL

Ethics Ref: H0013262 - Australian school principals and education law: The impact of education law on the principalship in Australia

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We are pleased to advise that acting on a mandate from the Tasmania Social Sciences HREC, the Chair of the committee considered and approved the above project on 22 May 2013.

This approval constitutes ethical clearance by the Tasmania Social Sciences Human Research Ethics Committee. The decision and authority to commence the associated research may be dependent on factors beyond the remit of the ethics review process. For example, your research may need ethics clearance from other organisations or review by your research governance coordinator or Head of Department. It is your responsibility to find out if the approval of other bodies or authorities is required. It is recommended that the proposed research should not commence until you have satisfied these requirements.

Please note that this approval is for four years and is conditional upon receipt of an annual Progress Report. Ethics approval for this project will lapse if a Progress Report is not submitted.

The following conditions apply to this approval. Failure to abide by these conditions may result in suspension or discontinuation of approval.

1. It is the responsibility of the Chief Investigator to ensure that all investigators are aware of the terms of approval, to ensure the project is conducted as approved by the Ethics Committee, and to notify the Committee if any investigators are added to, or cease involvement with, the project.

2. **Complaints:** If any complaints are received or ethical issues arise during the course of the project, investigators should advise the Executive Officer of the Ethics Committee on 03 6226 7479 or [human.ethics@utas.edu.au](mailto:human.ethics@utas.edu.au).
3. **Incidents or adverse effects:** Investigators should notify the Ethics Committee immediately of any serious or unexpected adverse effects on participants or unforeseen events affecting the ethical acceptability of the project.
4. **Amendments to Project:** Modifications to the project must not proceed until approval is obtained from the Ethics Committee. Please submit an Amendment Form (available on our website) to notify the Ethics Committee of the proposed modifications.
5. **Annual Report:** Continued approval for this project is dependent on the submission of a Progress Report by the anniversary date of your approval. You will be sent a courtesy reminder closer to this date. **Failure to submit a Progress Report will mean that ethics approval for this project will lapse.**
6. **Final Report:** A Final Report and a copy of any published material arising from the project, either in full or abstract, must be provided at the end of the project.

Yours sincerely

**Lauren Black**  
Ethics Administrator  
Office of Research Services  
Tel: +61 (03) 6226 2764  
Email: [lauren.black@utas.edu.au](mailto:lauren.black@utas.edu.au)  
University of Tasmania  
Private Bag 01 Hobart Tas 7001

## Appendix A2

### HREC Amendment Approval (H 13262) – 23 Dec 2013

Social Science Ethics Officer  
Private Bag 01 Hobart  
Tasmania 7001 Australia  
Tel: (03) 6226 2763  
Fax: (03) 6226 7148  
Human.ethics@utas.edu.au



HUMAN RESEARCH ETHICS COMMITTEE (TASMANIA) NETWORK

23 December 2013

Professor Neil Cranston  
Faculty of Education  
Private Bag 66

*Sent via email*

Dear Professor Cranston

Re: APPROVAL FOR AMENDMENT TO CURRENT PROJECT  
Ethics Ref: **H0013262 - Australian school principals and education law: The impact of education law on the principalship in Australia**

- Change of project dates: revised data collection to commence March-April 2014, with project completion in December 2015.
- Principals Australia Institute (PAI) to host a revised, on-line survey.
- Appendices A and B: draft advertisements for PAI website and e-newsletter.
- Appendix C: Revised On-line Survey.
- Appendix D: Explanation of changes to survey.
- Appendix E: Revised Interview Schedule for School Principals.
- Addition of a survey incentive: 2 iPad Minis offered in a random draw.
- Appendix F: Prize Draw and Interview Registration.
- Appendix G: Terms and Conditions for Prize Draw.
- Appendix H: Email to Prize Draw Winners.
- Appendices I and J: Revised Information Sheet and Consent Form.

We are pleased to advise that the Chair of the Tasmania Social Sciences Human Research Ethics Committee approved the Amendment to the above project on 20 December 2013.

Yours sincerely

Katherine Shaw  
Ethics Officer  
Tasmania Social Sciences HREC

## Appendix A3

### HREC Amendment Approval (H 13262) – 5 Mar 2014

Social Science Ethics Officer  
Private Bag 01 Hobart  
Tasmania 7001 Australia  
Tel: (03) 6226 2763  
Fax: (03) 6226 7148  
Human.ethics@utas.edu.au




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HUMAN RESEARCH ETHICS COMMITTEE (TASMANIA) NETWORK

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5 March 2014

Professor Neil Cranston  
Faculty of Education  
Private Bag 66

*Sent via email*

Dear Professor Cranston

Re: APPROVAL FOR AMENDMENT TO CURRENT PROJECT  
Ethics Ref: **H0013262 - Tasmanian school principals and education law: The impact of education law on the principalship in Tasmania**

1. Title and Scope of project: now limited to Tasmania only, title of project amended accordingly.
2. Supporting organisations: State-based professional associations (the Tasmanian Principals Association, Independent Schools Tasmania, and the Tasmanian Chapter of the Association of Heads of Independent Schools Australia) will be approached to disseminate a notice to their members.
3. Public documents revised to change references to 'Australia' to 'Tasmania', and to omit references to 'Principals Australia Institute'.
4. Other approvals: Approval will be sought from the Tasmanian Department of Education and the Tasmanian Catholic Education Office.
5. Terms and conditions of prize draw: now incorporated into the on-line survey for the prize draw itself.

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We are pleased to advise that the Chair of the Tasmania Social Sciences Human Research Ethics Committee approved the Amendment to the above project on 4 March 2014.

Yours sincerely

Katherine Shaw  
Executive Officer  
Tasmania Social Sciences HREC



## Appendix B – Institutional Approvals

### Appendix B1

#### TCEO Approval – 7 Mar 2014



## Appendix B2

### DoE Approval – 17 April 2014

Department of Education  
EDUCATIONAL PERFORMANCE SERVICES  
  
2/73 Murray Street, Hobart  
GPO Box 169, Hobart, TAS 7001 Australia



File: 2014 - 6

17 April 2014

Ms Allison Trimble  
Faculty of Education  
University of Tasmania  
Locked Bag 1307  
**Newnham Campus TAS 7250**

Dear Ms Trimble

#### **School Principals and Education Law: The impact of Education Law on the principalship in Tasmania 2014**

I have been advised by the Educational Performance Research Committee that the above research study adheres to the guidelines established and that there is no objection to the study proceeding. Before doing so, however, we request that you meet with Katrina Beams. She may be contacted on 61655706 during office hours.

Please note that you have been given permission to proceed at a general level, and not at individual principal level. You will still need to seek permission from the principals to be involved in the study. Please provide them with the File number or a copy of this letter when approaching them for assistance.

A copy of your final report should be forwarded to Educational Performance Services, Department of Education, GPO Box 169, Hobart, 7001 at your earliest convenience and within six months of the completion of the research phase.

If you have further questions or concerns please contact Fiona Atkins on (03) 6165 5711.

Yours sincerely

Katrina Beams, Assistant Director  
(Educational Performance Services)

## **Appendix C - Participant Information Sheet**

### **TASMANIAN SCHOOL PRINCIPALS AND EDUCATION LAW**

#### **Invitation**

You are invited to participate in an exploratory study concerning the impact of Education law on the principalship in Tasmania. This is the first study of its type to address these issues in Tasmania, across the three educational sectors (Government, Catholic and Independent) and on a State-wide basis.

The views of appointed and acting School Principals, as well as school leaders holding equivalent positions (e.g., Heads of Schools), are sought for this study.

This study is being conducted in partial fulfilment of a PhD degree in Education by Allison Trimble, a candidate in the Faculty of Education, University of Tasmania and is being supervised by Professor Neil Cranston, also from the Faculty of Education at UTAS. This research will expand on a pilot study undertaken by Allison with government primary principals in Northern Tasmania in 2011.

#### **What is the purpose of this study?**

The over-arching purpose of this study is to explore the impact of Education law on the principalship in Tasmania. This purpose is embodied in the following specific research questions:

- With which areas of Education law do Tasmanian principals deal?
- What level of knowledge is held by Tasmanian principals in relation to Education law?
- How do Tasmanian principals identify that legal problems may be developing, or exist, in their schools?
- What sources of Education law information do Tasmanian principals consult about legal problems?
- How does Education law impact on Tasmanian principals personally and professionally?
- What might be done to address any identified needs of Tasmanian principals with regard to Education law?

#### **Why have you been invited to participate?**

You have been invited to participate in this study based on your knowledge and experience of Education law, through your current employment as a School Principal/ Head within a sector of Tasmanian education.

Your involvement in this research is entirely voluntary. There are no consequences if you decide not to participate and such a decision will have no adverse consequences, for example, it will not affect any relationship you may have with UTAS. Further, you may discontinue your participation at any time, without providing any explanation.

**What will you be asked to do?**

To participate in the first phase of the study, you will be asked to complete an on-line survey, which should take 15-20 minutes. The survey seeks general demographic information about your school, and about you, as well as information about your involvement in Education law issues, sources you rely on when dealing with Education law issues, your understanding of Tasmanian discrimination legislation which applies to schools, the personal impact of dealing with Education law problems, and professional development needs. The survey process is completely anonymous; there will be no way to link your survey responses to you or your school.

When you submit your responses to the survey, you will be asked if you wish to be involved in the second, interview phase of the study. Participation as an interviewee is entirely voluntary. A further *Participant Information Sheet* for the interview phase will be provided to principals who may wish to be interviewed.

It should be noted that, even with an anonymous survey, there may still be a chance that the unique characteristics of an individual principalship could create a potential for a participant to be identified by his or her colleagues or community. If this causes concern, your decision to withdraw from the study, or not to further participate, at any time, will be respected.

**Are there any possible benefits from participation in this study?**

It is hoped that the results of this study might lead to School Principals throughout Tasmania receiving appropriate preparation and support for dealing with Education law matters.

Are there any possible risks from participation in this study?

There are no specific risks anticipated with participation in this study.

**What if you have information about criminal or illegal activities?**

If you have such information you are strongly recommended to seek the advice of a legal practitioner and to comply with relevant policy directives from your employer, and any legal orders or statutory obligations which apply. Information about criminal or illegal activities, as such, falls beyond the scope of this research study, and accordingly, you are requested not to disclose the details of such activities. The manner in which you may have dealt with a crime or illegal act would however be of interest for the study and may appropriately be addressed, in general terms, in your survey response or interview.

If information about criminal or illegal activities should be disclosed to a Research Team member, that member will seek legal advice and will comply with relevant legal orders and statutory obligations. This may require the disclosure of certain information.

### **What if you change your mind during or after the study?**

It is important for you to understand that your involvement in this study is completely voluntary. While we would be pleased to have you take part, we respect your right to decline. There will be no consequences if you decide not to participate. Further you may withdraw from the study at any time, without providing any explanation. You should however be aware that practical considerations may require your anonymous response to be included in the survey data set.

If you decide to withdraw from the study:

- Before completing the survey, do not submit your response and simply close the link to the survey. There will be no record maintained of your computer address or your survey answers.
- After submitting the survey, it will not be possible to identify and remove your response from the results, as all responses are anonymous. Your data will therefore be kept and counted. However your answers will be totally anonymous, with no link to you or your computer.

### **What will happen to the information when this study is over?**

The data collected in this study will be processed in a UTAS password protected computer and stored in an encrypted security file. All raw data will be stored in a locked filing cabinet in the Chief Investigator's office. All data will be stored for five years beyond the date of publication of any results and will then be destroyed by security shredding and hard drive reformatting.

How will the results of the study be published?

The findings of this study will form the basis of the student researcher's PhD thesis, which will be available at the UTAS library following completion of the study. It is also intended to publish journal articles about the findings, possibly in the ACEL publication, *Leading and Managing*. Once the study has been completed we will forward a report on the main findings to each person who offered to participate in the interview phase. The survey participants will unfortunately not be identifiable. School Principals/ Heads can however obtain a copy of the report by contacting a member of the Research Team.

No participants, their schools, or school systems will be identified in the reporting of this study.

**What if I have questions about this study?**

If you would like to discuss any aspect of this study, please feel free to contact a member of the research team:

Professor Neil Cranston – Chief Investigator: 03 6226 7404. [Neil.Cranston@utas.edu.au](mailto:Neil.Cranston@utas.edu.au).

Allison Trimble – Student Investigator: 03 6343 6315 [Allison.Trimble@utas.edu.as](mailto:Allison.Trimble@utas.edu.as).

This study has been approved by the Tasmanian Social Sciences Human Research Ethics Committee. If you have concerns or complaints about the conduct of this study, please contact the Executive Officer of the HREC (Tasmania) Network on (03) 6226 7479 or email [human.ethics@utas.edu.au](mailto:human.ethics@utas.edu.au). The Executive Officer is the person nominated to receive complaints from research participants. Please quote ethics reference number H0013262. In addition, Approval for the conduct of this study in Tasmanian government and Catholic schools has been obtained from the Tasmanian Department of Education and the Catholic Education Office.

Thank you for taking the time to consider this study. Please feel free to save or print this Information Sheet.

If you wish to participate in the study, please also read the Consent Form set out on the following page.

**TASMANIAN SCHOOL PRINCIPALS AND EDUCATION LAW****Consent Form**

I agree to take part in the research study named above.

I have read and understood the *Participant Information Sheet* for this study.

The nature and possible effects of the study have been explained to me.

I understand that this phase of the study involves an on-line survey. I understand that it will take approximately 15-20 minutes to complete. The survey will be wholly anonymous, and will not be linked to me, my computer or my school. The survey will address my dealings with Education law as a School Principal/ Head.

I understand that there are no specific risks anticipated with participation in this study.

I understand that all research data will be securely stored on the University of Tasmania's premises for five years from the publication of the study results, and will then be destroyed.

Any questions that I have asked have been answered to my satisfaction.

I understand that the researcher(s) will maintain confidentiality, subject to the requirements of any legal order or statutory obligation of disclosure, and that any information I supply to the researcher(s) will be used only for the purposes of the research.

I understand that information regarding illegal or criminal activity falls beyond the scope of this study and that details of such should not be disclosed in the course of responding to the survey. I have read and understood the advice set out in the *Participant Information Sheet* about appropriate action to take if I hold such information.

I understand that the results of the study will be published so that I cannot be identified as a participant.

I understand that my participation is voluntary and that I may withdraw at any time without any effect.

I understand that I will not be able to withdraw my data after submitting my response as the survey data will have been collected anonymously.

## Appendix D - Survey Instrument

### Tasmanian School Principals and Education law Survey

Q1 Background Are you the appointed or acting principal of a Tasmanian school? ('Principal' includes a person holding any equivalent position, including as Head of School)

- ☐ Yes
- ☐ No

Q2 How long have you been an appointed/ acting principal?

- ☐ Up to 2 years
- ☐ 2-5 years
- ☐ More than 5 years but less than 10
- ☐ 10 years or more

Q3 Which age bracket applies to you?

- ☐ 25-35 years
- ☐ 36-45 years
- ☐ 46-55 years
- ☐ 56 years +

Q4 In which region of Tasmania is your school located?

- ☐ Greater Hobart & Southern Midlands
- ☐ North, North East & Off-shore
- ☐ Mersey-Lyell

Q5 In which schooling sector does your school operate?

- ☐ Government
- ☐ Catholic
- ☐ Independent

Q6 Which term best describes the location of your school?

- ☐ Metropolitan (within close proximity to Hobart)
- ☐ Provincial (within close proximity to Launceston, Burnie or Devonport)
- ☐ Rural
- ☐ Isolated



Q7 Which term best describes the category of your school?

- ☐ Primary
- ☐ Secondary
- ☐ Combined
- ☐ Special
- ☐ Secondary College only

Q8 How many students are enrolled at your school?

- ☐ Less than 200
- ☐ 200-500
- ☐ More than 500

Q9 Legal Training Have you studied any Education law as part of a tertiary qualification?

- ☐ Yes
- ☐ No

Q10 Please give a brief description of the Education law subject(s), course and institution.

Q11 Have you studied any other law subject(s) as part of a tertiary qualification (not Education law)?

- ☐ Yes
- ☐ No

Q12 Please give a brief description of the non-Education law subject(s), course and institution.

Q13 During the last year, did you attend any in-service training or PD on legal issues related to education?

- ☐ Yes
- ☐ No

Q14 Which legal issues did that training or PD address? (You can indicate more than one response)

- ☐ Education issues (includes enrollment, home schooling & absenteeism)
- ☐ Criminal Law issues (includes drugs, assault, theft, property damage, search & seizure)
- ☐ Employment issues (includes workers' compensation, OH&S, teacher registration & workplace relations)
- ☐ Duty of Care issues (includes injuries, supervision & negligence)
- ☐ Family law issues (including divorce, separation, parental responsibility, residence & changing names)
- ☐ Child Welfare issues (including out-of-home-care, abuse & neglect)
- ☐ Social Security issues (including school attendance requirements & income entitlements)
- ☐ Immigration issues (includes visas, residence, asylum & immigration claims)
- ☐ Anti-Discrimination issues (includes race, disability, gender, sexual orientation & pregnancy)
- ☐ Privacy and FOI issues (access to information)
- ☐ Copyright issues (including reproduction limitations & school exemptions)
- ☐ Fund-raising issues (including unincorporated associations, donations, sponsorship, lotteries & accounting requirements)
- ☐ Defamation issues (including standards & defences)
- ☐ Other issues (please specify) \_\_\_\_\_

Q15 Routine Legal Matters This section asks about ROUTINE legal matters you may have dealt with as a school leader. These are day-to-day, legally-related, issues that require you to make a standard decision or response. During the last year, did you deal with any ROUTINE legal matters?

- ☐ Yes
- ☐ No

Q16 In dealing with those ROUTINE legal matters, which sources of information did you consult? (You can select more than one response)

- ☐ Department/ System/School lawyers
- ☐ Department/ System/ School law manual or guidelines
- ☐ Department/ System/ School non-legal staff
- ☐ School leader colleagues
- ☐ Own knowledge
- ☐ PD or training materials
- ☐ University materials
- ☐ Professional association or union
- ☐ Education law textbooks
- ☐ Aust. & NZ Education law journal
- ☐ Non-education colleague
- ☐ Other (please specify) \_\_\_\_\_

Q17 Which of those sources did you find useful in dealing with ROUTINE matters? (You can select more than one response)

- ☐ Department/ System/School lawyers
- ☐ Department/ System/ School law manual or guidelines
- ☐ Department/ System/ School non-legal staff
- ☐ School leader colleagues
- ☐ Own knowledge
- ☐ PD or training materials
- ☐ University materials
- ☐ Professional association or union
- ☐ Education law textbooks
- ☐ Aust. & NZ Education law journal
- ☐ Non-education colleague
- ☐ Other (please specify) \_\_\_\_\_

Q18 In relation to the one source of information you found most useful, please describe why you found it so useful.

Q19 Non-routine Legal Problems This section relates to NON-ROUTINE legal problems you may have dealt with as a school leader. These are legal issues that are out-of-the-ordinary, especially urgent or have the potential for serious consequences. During the last year, did you deal with any NON-ROUTINE legal problems?

- ☐ Yes
- ☐ No

Q20 In dealing with those NON-ROUTINE legal matters, which sources of information did you consult? (You can select more than one response).

- ☐ Department/ System/ School lawyers
- ☐ Department/ System/ School law manual or guidelines
- ☐ Department/ System/ School non-legal staff
- ☐ School leader colleagues
- ☐ Own knowledge
- ☐ PD or training materials
- ☐ University materials
- ☐ Professional association or union advice or materials
- ☐ Education law textbooks
- ☐ Aust. & NZ Education law journal
- ☐ Non-education colleague
- ☐ Other. Please describe. \_\_\_\_\_

Q21 Which of those sources did you find useful in dealing with NON-ROUTINE matters? (You can select more than one response)

- ☐ Department/ System/ School lawyers
- ☐ Department/ System/ School law manual or guidelines
- ☐ Department/ System/ School non-legal staff
- ☐ School leader colleagues
- ☐ Own knowledge
- ☐ PD or training materials
- ☐ University materials
- ☐ Professional association or union advice or materials
- ☐ Education law textbooks
- ☐ Aust. & NZ Education law journal
- ☐ Non-education colleague
- ☐ Other. Please describe. \_\_\_\_\_

Q22 In relation to the one source of information you found most useful, please describe why you found it so useful.

Q23 Tasmanian Discrimination Law This section seeks information about your understanding of aspects of Education law. It focuses on the Tasmanian discrimination law that impacts on schools in this State, and includes several true/false statements about discrimination law relating to disability, sex, and race discrimination. Please note, the questions are based on the Tasmanian Anti-Discrimination Act 1998, not the Commonwealth discrimination legislation.

Q24 Please indicate your response to the following statement: "If I have to deal with a discrimination issue, I feel confident about my own level of legal knowledge and understanding."

- ☐ Strongly Disagree
- ☐ Disagree
- ☐ Neither Agree nor Disagree
- ☐ Agree
- ☐ Strongly Agree

Q25 Disability discrimination This question, and the one following, relate to disability discrimination under the Tasmanian Anti-Discrimination Act 1998 (the A-DA). How often have you dealt with problems involving disability discrimination under the A-DA?

- ☐ Never
- ☐ Rarely
- ☐ Sometimes
- ☐ Often

Q26 The statements set out in this Table relate to disability discrimination under the Tasmanian Anti-Discrimination Act 1998 (the A-DA). For each of the statements, please indicate whether you think the statement is true or false, or if you are unsure.

	TRUE	FALSE	UNSURE
Tasmanian disability law requires schools to apply the same Disciplinary Code to all students, regardless of ability or disability.			
Under the Tasmanian law, a school that enrolls a student who is hearing-impaired must offer that student a choice between having an AUSLAN interpreter or a note-taking aide.			
In accordance with Tasmanian law, a school may require the parent of a student with a disability to deal only with one nominated member of staff, to ensure continuity and consistency.			

Q27 Sex discrimination This question, and the one following, relate to sex discrimination under the Tasmanian Anti-Discrimination Act 1998 (the A-DA). How often have you dealt with problems involving sex discrimination (including sexual harassment) under the A-DA?

- ☐ Never
- ☐ Rarely
- ☐ Sometimes
- ☐ Often

Q28 The statements set out in this Table relate to sex discrimination under the Tasmanian Anti-Discrimination Act 1998 (the A-DA). For each of the statements, please indicate whether you think the statement is true, false, or if you are unsure.

	TRUE	FALSE	UNSURE
<p>Under the Tasmanian law, a sexual harassment claim could be made against a male primary school student who chases a female classmate around the playground, and lifts her skirt with a ruler.</p> <p>An education employer (independent or systemic) may be liable for sexual harassment between its employees, even if the behaviour occurs out-of-school-hours and away from the workplace.</p> <p>Schools are exempt from the provisions of the Tasmanian A-DA, regarding the management of students (but not staff) who are breastfeeding or who have parental responsibilities.</p>			

**Q29 Racial discrimination** This question, and the one following, relate to racial discrimination under the Tasmanian Anti-Discrimination Act 1998 (the A-DA). How often have you dealt with problems involving racial discrimination (including racial vilification and harassment) under the A-DA?

- ☐ Never
- ☐ Rarely
- ☐ Sometimes
- ☐ Often

**Q30** The statements set out in this Table relate to racial discrimination under the Tasmanian Anti-Discrimination Act 1998 (the A-DA). For each of the statements, please indicate whether you think the statement is true, false, or if you are unsure.

	TRUE	FALSE	UNSURE
<p>Students who publicly make racially-insulting comments to each other are exempt from prosecution under the A-DA because the Constitutional right to free speech takes precedence over the Tasmanian legislation.</p> <p>The provision of a special cultural heritage class for indigenous students, from which non-indigenous students are excluded, is likely to be exempt from the race discrimination prohibitions in the A-DA.</p> <p>Under the Tasmanian law, parents who do unpaid volunteer work in schools are entitled to the same protections from racial discrimination as school employees.</p>			

Q31 Please use this space to make any comments about your experiences with discrimination law in schools.

Q32 Professional impact of Education law Which of the following Education law topics have you dealt with as a school leader? (You can indicate more than one response)

- ☐ Education issues (includes enrolment, home schooling & absenteeism)
- ☐ Criminal Law issues (includes drugs, assault, theft, property damage, search & seizure)
- ☐ Employment issues (includes workers' compensation, OH&S, teacher registration & workplace relations)
- ☐ Duty of Care issues (includes injuries, supervision & negligence)
- ☐ Family law issues (including divorce, separation, parental responsibility, residence & changing names)
- ☐ Child Welfare issues (including out-of-home-care, abuse & neglect)
- ☐ Social Security issues (including school attendance requirements & income entitlements)
- ☐ Immigration issues (includes visas, residence, asylum & immigration claims)
- ☐ Anti-Discrimination issues (includes race, disability, gender, sexual orientation & pregnancy)
- ☐ Privacy and FOI issues (access to information)
- ☐ Copyright issues (including reproduction limitations & school exemptions)
- ☐ Fund-raising issues (including unincorporated associations, donations, sponsorship, lotteries & accounting requirements)
- ☐ Defamation issues (including standards & defences)
- ☐ Other issues (please specify) \_\_\_\_\_

Q31 Please use this space to make any comments about your experiences with discrimination law in schools.

Q32 Professional impact of Education law Which of the following Education law topics have you dealt with as a school leader? (You can indicate more than one response)

- ☐ Education issues (includes enrolment, home schooling & absenteeism)
- ☐ Criminal Law issues (includes drugs, assault, theft, property damage, search & seizure)
- ☐ Employment issues (includes workers' compensation, OH&S, teacher registration & workplace relations)
- ☐ Duty of Care issues (includes injuries, supervision & negligence)
- ☐ Family law issues (including divorce, separation, parental responsibility, residence & changing names)
- ☐ Child Welfare issues (including out-of-home-care, abuse & neglect)
- ☐ Social Security issues (including school attendance requirements & income entitlements)
- ☐ Immigration issues (includes visas, residence, asylum & immigration claims)
- ☐ Anti-Discrimination issues (includes race, disability, gender, sexual orientation & pregnancy)
- ☐ Privacy and FOI issues (access to information)
- ☐ Copyright issues (including reproduction limitations & school exemptions)



- ☐ Fund-raising issues (including unincorporated associations, donations, sponsorship, lotteries & accounting requirements)
- ☐ Defamation issues (including standards & defences)
- ☐ Other issues (please specify) \_\_\_\_\_

Q33 In relation to the selected topic(s), please give an indication of how often that issue arises.

	Never	Rarely	Sometimes	Often	Very often
Education issues (includes enrollment, home schooling & absenteeism)					
Criminal Law issues (includes drugs, assault, theft, property damage, search & seizure)					
Employment issues (includes workers' compensation, OH&S, teacher registration & workplace relations)					
Duty of Care issues (includes injuries, supervision & negligence)					
Family law issues (including divorce, separation, parental responsibility, residence & changing names)					
Child Welfare issues (including out-of-home-care, abuse & neglect)					
Social Security issues (including school attendance requirements & income entitlements)					
Immigration issues (includes visas, residence, asylum & immigration claims)					
Anti-Discrimination issues (includes race, disability, gender, sexual orientation & pregnancy)					
Privacy and FOI issues (access to information)					
Copyright issues (including reproduction limitations & school exemptions)					

Fund-raising issues (including unincorporated associations, donations, sponsorship, lotteries & accounting requirements)					
Defamation issues (including standards & defences)					
Other issues (please specify)					

Q34 If you have been dissatisfied with your own legal knowledge about any of these areas, please explain the reasons for your dissatisfaction.

Q35 During an average working week, about how many hours do you spend dealing with legal issues? (This could include time spent filling in forms, seeking advice, talking to students, staff, parents and lawyers, recording action taken over incidents, advising superiors etc.)

- ☐ Less than 1 hour
- ☐ 1-2 hours
- ☐ 3-4 hours
- ☐ More than 4 hours

Q36 Personal Impact of Education law The following 3 statements are about dealing with legal problems and stress. (Please indicate your views about each statement).

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
Legal problems in my school cause me to feel stress.					
Legal problems cause me more stress than do other management issues.					
The legal problems I deal with now cause me more stress than the problems I dealt with in the past.					

Q37 Please provide any comments you would like to make about the personal impact of dealing with legal problems in your work. As detailed information about illegal or criminal activity falls beyond the scope of this study it is requested that you do not refer to such information in your

response. You may however describe in general terms the impact that such an incident has had on you personally.

Q38 Professional Learning About Education law If professional learning opportunities about Education law were available to you, would you access them?

- ☐ Definitely would not
- ☐ Probably would not
- ☐ Don't know
- ☐ Probably would
- ☐ Definitely would

Q39 Please select the Education law topics about which you would you like to receive more PD. (You can indicate more than one topic)

- ☐ Education issues (includes enrolment, home schooling & absenteeism)
- ☐ Criminal Law issues (includes drugs, assault, theft, property damage, communications & cybercrime, search & seizure)
- ☐ Employment issues (includes workers' compensation, OH&S, teacher registration & workplace relations)
- ☐ Duty of Care issues (includes injuries, supervision & negligence)
- ☐ Family law issues (including divorce, separation parental responsibility, residence & changing names)
- ☐ Child Welfare issues (including out-of-home-care, abuse & neglect)
- ☐ Social Security issues (including school attendance requirements & income entitlements)
- ☐ Immigration issues (including visas, residence, asylum & immigration claims)
- ☐ Anti-Discrimination issues (includes race, disability, gender, sexual orientation & pregnancy)
- ☐ Privacy and FOI issues (access to information)
- ☐ Copyright issues (including reproduction limitations & school exemptions)
- ☐ Fund-raising issues (including unincorporated associations, donations, sponsorship, lotteries & accounting requirements)
- ☐ Defamation issues (including standards and defences)
- ☐ Other issues (please specify) \_\_\_\_\_

Q40 From the Education law topics you selected, please indicate the topic(s) you would give highest priority for more PD? (Please select up to 3 topics)

- ☐ Education issues (includes enrolment, home schooling & absenteeism)
- ☐ Criminal Law issues (includes drugs, assault, theft, property damage, communications & cybercrime, search & seizure)
- ☐ Employment issues (includes workers' compensation, OH&S, teacher registration & workplace relations)
- ☐ Duty of Care issues (includes injuries, supervision & negligence)
- ☐ Family law issues (including divorce, separation parental responsibility, residence & changing names)
- ☐ Child Welfare issues (including out-of-home-care, abuse & neglect)
- ☐ Social Security issues (including school attendance requirements & income entitlements)
- ☐ Immigration issues (including visas, residence, asylum & immigration claims)
- ☐ Anti-Discrimination issues (includes race, disability, gender, sexual orientation & pregnancy)
- ☐ Privacy and FOI issues (access to information)
- ☐ Copyright issues (including reproduction limitations & school exemptions)
- ☐ Fund-raising issues (including unincorporated associations, donations, sponsorship, lotteries & accounting requirements)
- ☐ Defamation issues (including standards and defences)
- ☐ Other issues (please specify) \_\_\_\_\_

Q41 In relation to the one Education law topic that you would give first priority, please describe the reasons for that priority.

Q42 The following list describes different ways for developing your understanding about Education law. Please indicate the way(s) you would prefer to use. (You can select more than one response)

- ☐ Department/ System/ School law manual & guidelines
- ☐ In-service training/ PD courses
- ☐ University training
- ☐ On-line learning
- ☐ Training provided by Department/ System/ School lawyers
- ☐ Training provided by professional organisations
- ☐ Training provided by Australia & NS Education law Association
- ☐ Education law texts or journals
- ☐ Other (Please specify) \_\_\_\_\_

Q43 Please provide any additional comments about ways to develop your understanding of Education law.

Q44 Additional Comments and Prize Draw Please use this space for any other information you would like to provide about the impact of Education law matters on you, your work or your school. (As detailed information about illegal or criminal activity falls beyond the scope of this study it is requested that you do not refer to such information in your response. You may however describe in general terms how you dealt with such an incident.)

Q45 This is the end of the survey. Your participation is greatly appreciated. Please click "NEXT" below, to submit your anonymous survey response. You will then be redirected to a separate website, where you can register your school in a prize draw to win one of two iPad Mini tablets. This is to thank you for your important contribution to this study. Once again, many thanks from the Research Team.

## **Appendix E - Initial Interview Schedules**

### **Interview Schedule — School Principals/ Heads**

Questions in the interview will be based upon the following topics:

- The impact of Education law issues on the participant's school leadership (covering aspects like stress, time, sorts of problems dealt with, description of a particular incident).
- Adequacy of professional preparation to deal with Education law issues (in early/ later career).
- Managing legal risks (strategies to identify routine and non-routine legal risks, policies to avoid or reduce legal risk, changes to curriculum/ extracurricular activities due to legal issues - excursions, outdoor education).
- Concerns about schools and Education law (insurance, teacher training, personal liability).

The following form of words is to be read to each participant prior to commencement of the interview:

“Information about criminal or illegal activities, as such, falls beyond the scope of this research study, and accordingly, you are requested not to disclose the details of such activities. The manner in which you may have dealt with a crime or illegal act would however be of interest for the study and may appropriately be addressed, in general terms, in your interview response.”

### **Interview Schedule — System Managers**

Questions in the interview will be based upon the following topics:

- Supports provided to principals for Education law responsibilities (advice, resources, professional learning).
- Impact of Education law issues on the education system as a whole (financial, morale, priorities, school-based management).
- Concerns about schools and legal matters (insurance, teacher training, principal preparation and qualifications).

- Managing legal risks in the education system (Systemic policies to reduce risk – outdoor education, excursions, extracurricular activities).

The following form of words is to be read to each participant prior to commencement of the interview:

“Information about criminal or illegal activities, as such, falls beyond the scope of this research study, and accordingly, you are requested not to disclose the details of such activities. The manner in which you may have dealt with a crime or illegal act would however be of interest for the study and may appropriately be addressed, in general terms, in your interview response.”

### **Interview Schedule — Principal Network Leaders**

Questions in the interview will be based upon the following topics:

- The impact of Education law issues on school leadership (covering aspects like stress, time, sorts of problems dealt with, description of a particular incident).
- Adequacy of professional preparation of principals to deal with Education law issues (in early/ later career).
- Managing legal risks strategies to identify routine and non-routine legal risks, policies to avoid or reduce legal risk, changes to curriculum/ extracurricular activities due to legal issues - excursions, outdoor education).
- Concerns about schools and Education law (insurance, teacher training, personal liability).

The following form of words is to be read to each participant prior to commencement of the interview:

“Information about criminal or illegal activities, as such, falls beyond the scope of this research study, and accordingly, you are requested not to disclose the details of such activities. The manner in which you may have dealt with a crime or illegal act would however be of interest for the study and may appropriately be addressed, in general terms, in your interview response.”

### **Interview Schedule — Education law practitioners**

Questions in the interview will be based on the following topics:

- Areas of law on which School Principals seek advice and seriousness of incidents involved.
- Frequency of requests for advice.
- Involvement in legal risk management (advice on policy) and professional development for School Principals and staff.
- Perceived Education law needs for School Principals.



## **Appendix F - Revised Interview Schedules**

### **Interview Schedule — School Principals/ Heads**

Questions in the interview will be based upon the following topics:

- When you think about the legal matters you deal with in your school, what issues or ideas come to mind? Why?  
What 3 words do you think of in relation to law in schools?
- As a school leader, have you dealt with any legal issues or incidents that have had a significant effect on you personally and professionally? Can you briefly describe what happened and the outcomes for yourself and the school?  
Do you have any colleagues who have been affected by dealing with legal problems?
- Do you have access to legal advice if you need it? What would trigger you seeking such advice?
- Are there circumstances when you would not get legal advice – if so, what would they be?
- Do you conduct in-service training for your staff about legal issues? Would you be interested in accessing more legal PL if it was available?
- For you, what might appropriate/ the best legal PL be like?  
Would this assist you to conduct in-service PL on legal issues for your staff?
- The research on education law suggests that many school leaders are not well informed about legal issues and the laws that affect the operation of schools. Does this concern you – if so, is it a major concern?
- Should this deficit be addressed, or should principals be allowed to ‘muddle through’ as they have in the past?

The following form of words is to be read to each participant prior to commencement of the interview:

“Information about criminal or illegal activities, as such, falls beyond the scope of this research study, and accordingly, you are requested not to disclose the details of such activities. The

manner in which you may have dealt with a crime or illegal act would however be of interest for the study and may appropriately be addressed, in general terms, in your interview response.”

### **Interview Schedule — System Managers**

Questions in the interview will be based upon the following topics:

- Supports provided to principals for Education law responsibilities (advice, resources, professional learning).
- Impact of Education law issues on the education system as a whole (financial, morale, priorities, school-based management).
- Concerns about schools and legal matters (insurance, teacher training, principal preparation and qualifications).
- Managing legal risks in the education system (Systemic policies to reduce risk – outdoor education, excursions, extra-curricular activities).

The following form of words is to be read to each participant prior to commencement of the interview:

“Information about criminal or illegal activities, as such, falls beyond the scope of this research study, and accordingly, you are requested not to disclose the details of such activities. The manner in which you may have dealt with a crime or illegal act would however be of interest for the study and may appropriately be addressed, in general terms, in your interview response.”

### **Interview Schedule —Principal Network Leaders**

Questions in the interview will be based upon the following topics:

- When you think about the legal matters you deal with in your school, what issues or ideas come to mind? Why?  
What 3 words do you think of in relation to law in schools?

- Have you experienced or observed any legal issues or incidents that have had a significant effect on you personally and professionally? Can you briefly describe what happened and the outcomes for yourself and the school?
- Do you have any colleagues who have been affected by dealing with legal problems?
- Do principals contact you seeking advice on legal matters? In what circumstances would they contact you? When would you refer them on to speak with a lawyer? Do you see any barriers that might stop a principal from contacting a lawyer about a legal problem?
- During your career in education, have you observed changes in schools as a consequence of legal requirements?
- The research on education law suggests that many school leaders are not well informed about legal issues and the laws that affect the operation of schools. Does this concern you – if so, is it a major concern?
- Should this deficit be addressed, or should principals be allowed to ‘muddle through’ as they have in the past?

The following form of words is to be read to each participant prior to commencement of the interview:

“Information about criminal or illegal activities, as such, falls beyond the scope of this research study, and accordingly, you are requested not to disclose the details of such activities. The manner in which you may have dealt with a crime or illegal act would however be of interest for the study and may appropriately be addressed, in general terms, in your interview response

## Appendix G

### *Limitations of Previous Research*

Table G1

*Limitations of Previous Research*

	<b>STEWART (1996)</b>	<b>MCCANN (2006)</b>	<b>TEH (2008)</b>	<b>TRIMBLE (2011)</b>
<b>Discussion of worldview</b>	No	Yes – Symbolic interactionism	No	Limited - Pragmatism
<b>Theory</b>	Yes – open systems, leadership types	Yes – leadership types	Yes – Legal system	Yes – open systems, role theory
<b>Contextual</b>	Yes – Legalisation	Yes – Catholic education	Yes – Globalisation, Common Law education law developments	Yes – Legalisation
<b>Methodology &amp; rationale</b>	Yes – Mixed method for comprehensiveness Triangulation No discussion of paradigm problems	Yes – Mixed method for comprehensiveness Triangulation Denies paradigm problems	Yes – Mixed methods to strengthen usefulness of study No discussion of paradigm problems	Yes – Mixed method for completeness Limited triangulation No discussion of paradigm problems
<b>Methods</b>	Survey / Focus group	Survey/ observations/ diary records	Document analysis/ survey & interviews/ Q methodology	Survey/ Interviews
<b>Sample:</b>	Principals (n=196)	Principals (n=102)	Principals (n=47)	Principals (n=15)
<b>Probability</b>	Random	Non-random	Non-random	Non-random
<b>System</b>	Govt only	Catholic	Government	Govt only
<b>Level of school</b>	Primary + secondary	Primary + secondary	Primary + secondary	Primary only
<b>Jurisdiction</b>	Queensland	Brisbane archdiocese	Singapore	Northern Tasmania
<b>Main focus</b>	Legal risk management	Interaction of Catholic and legal obligations	Emerging legal obligations	Need for legal training especially to deal with basic issues

Note: The research conducted by Dr Kim Teh (2006) involved a survey of a small group of Queensland school principals in its pilot phase. However the main topic of interest for her study was the impact of legal issues on the principalship in Singapore. As such, her study provided interesting ideas and insights for the researcher's work, but was not directly on point.

Data drawn from *School principals and the law: A study of the legal knowledge needed and held by principals in government schools in Queensland* by D. Stewart, 1996, PhD dissertation, Queensland University of Technology, Brisbane, QLD; *Principals' understandings of aspects of the law impacting on the administration of Catholic schools: Some implications for leadership* by P. McCann, 2006, PhD dissertation, Australian Catholic University, Melbourne, VIC; *Schools and the law: Legal issues internationally with implications for school leaders in Singapore* by M.K. Teh, 2008, PhD dissertation, University of Southern Queensland, Toowoomba, QLD; *Tasmanian school principals and education law: An exploratory study of the legal knowledge held by government school principals in Tasmania* by A. Trimble, B.Ed. Honours thesis, University of Tasmania, Launceston, TAS.

## Appendix H

### Australian Education Law Theses

Table H1

#### *Australian Dissertations and Theses on Education Law*

Law-focused	Education-focused
Birch (1975) – statute and case law	Goodman (1951) - teachers
O'Reilly (1984) – discipline and negligence	Stewart (1996) – principals
de Ross (1988) – negligence	Middleton (1999) – physical education teachers
Lucev (1988) – negligent teaching	Harapin (2003) – teachers
Walkley (1995) – physical safety	McCann (2006) – principals
Verma (1996) – negligent teaching	Newlyn (2006) – training of teachers
Keeffe (2004) – disability discrimination	Teh (2008) – principals
McGowan (2004) – education rights	Trimble (2011) – principals
Varnham (2004) – civil rights	
Lightfoot (2012) – disability discrimination	
Zigouras (2016) - teachers	

*Note:* Information concerning previous research was obtained from a dissertation and thesis search on Trove (National Library of Australia, 2014) dated Jun 11, 2017, using search terms: “Education Law” and “School Law”.

## Appendix I

### Approaches to Reduce the Costs of Obtaining Legal Support

In response to recognition that financial cost can constitute a barrier to individuals and organizations accessing justice in the form of legal advice and representation, Greacen, Johnson and Morris (2014) have presented a listing of options to reduce legal costs. Although their comments are grounded within the American legal system, their suggestions resonate to a degree with difficulties that may be faced by financially constrained bodies — for example, small independent schools — in obtaining legal services in Tasmania. A number of approaches, ranged along a continuum of responses, are set out in Table I1.

Table I1

#### *Options to Reduce Costs of Legal Services*

Legal advice	Legal representation in litigation
Self-help: websites, information sheets, community education, journals	Self-representation; alternative dispute resolution
Telephone helplines, free or fixed-price initial consultations	Limited scope representation
Limited scope agreements	Free or <i>pro bono</i> representation
Web-based providers	Group services
Free or <i>pro bono</i> advice	Conditional billing: no win no fee
Group services	Litigation funder: damages-based fee

Note: Data drawn from “From market failure to 100% access: Toward a civil justice continuum” by J. Greacen, A. Johnson, & V. Morris, 2014, *University of Arkansas at Little Rock Law Review*, 37(4), 551-572.

A number of options in Table I1 might assist Tasmanian schools reduce the impact of high lawyers’ fees for legal decision-support. “DIY” (Greacen et al., 2014, p. 554) options include information provided by legal websites; community education sessions such as those conducted by ANZELA and legal training providers; and professional journals including the *International Journal of Law and Education* (published by ANZELA) and the legal section of the

*Australian Education Leader*. Further along the continuum of support are free legal advice telephone services; community legal centres; and free or fee-capped initial consultations with lawyers (Australian Government Productivity Commission, 2014; Martin, 2014). In addition there is limited scope representation (Greacen et al., 2014; Martin, 2014), a “half-way house” between full representation and no representation (Australian Government Productivity Commission, 2014, p. 639) in which the package of services required to deal with a matter is unpacked, and client and lawyer agree which discrete tasks the lawyer will handle.

For more affordable, full-service, legal support the literature discusses access to publicly salaried lawyers. For example through the Legal Aid Commission of Tasmania, and private legal practitioners who provide legal services *pro bono* — provision of assistance by legal practitioners for free or at a reduced rate (Sandefur, 2007). A further avenue to reduce the cost of access to legal advice is through *closed-panel group legal services* in which a group of persons or organizations retain a law firm, or employ their own legal staff, to deal with members’ legal problems (Tomes, 2014-2015). The advent of the Internet has witnessed a burgeoning on-line industry providing advice on legal problems (Martin, 2014). These services range from public forums in which any member of the public may respond to a posted query, to responses purportedly provided by practicing lawyers, to legal firms which operate a virtual office (see, e.g. Just Answer Australia, 2003-2016; Law Answers, 2014-16; LegalVision, 2016).

Cost-saving approaches for obtaining legal advice may also be considered in relation to legal representation in litigation matters. The self-help option for litigation is fairly self-explanatory, albeit rarely advocated (Castles, 2015; Nicholson, 2003). Chief Justice Martin of the Supreme Court of Western Australia (2014) suggests that alternative dispute resolution, and in particular mediation, provides a means of reducing costs in civil litigation matters insofar as it permits the vast majority of cases to reach a consensus resolution without the need for a costly trial process. If however an issue does go to trial the literature on access to justice in Australia highlights two additional mechanisms to reduce the legal costs: conditional billing by lawyers, and private litigation funding. In relation to the first arrangement, Australian lawyers can offer *no win no fee* conditional billing, where no fee is charged to the client if the legal action is unsuccessful and an uplift percentage is added to the lawyer’s fee if the action succeeds (Australian Government Productivity Commission, 2014). This can be used by plaintiffs with monetary claims, and effectively shifts the burden of up-front fees to the representing lawyer or



law firm. It should however be noted that Australian lawyers, unlike their American counterparts, are prohibited from offering *damages-based billing* or percentage-based contingency fees (Law Institute of Victoria, 2015) where the lawyer takes a pre-specified share of any amount awarded to the plaintiff (Bathurst, 2015; Grave & McIntosh, 2015).

The second option to reduce the cost of litigation is that of third party funding, in which litigation funding companies provide the financial resources to bring a claim and indemnify the claimant for any costs ordered against them (Australian Government Productivity Commission, 2014). Litigation funders are not bound by the prohibition against damages-based fees. They are paid a share of the damages award if the claim succeeds, but are not paid if it is unsuccessful (Law Institute of Victoria, 2015; Legg, 2014). Nonetheless, as has been pointed out by Slade (2014), litigation funders “only fund cases in which the upside is measured in many millions of dollars” (p. 6), usually involving insolvencies, large commercial claims and class actions (Australian Government Productivity Commission, 2014).

## Appendix J

### Legally-Related Stressors, from Riley (2017)

Table J1

#### *Legally-Related Stressors from the 2017 Principal Wellbeing Survey*

Stressor	Rating	Stressor	Rating	Stressor	Rating
Quantity of work	7.76	Government initiatives	6.27	Critical incidents	4.63
Lack of time for teaching & learning	7.75	Poorly-performing staff	6.24	Interpersonal conflicts	4.54
Parent-related issues	6.52	Staff mental health	5.86	Lack of autonomy/ authority	4.25
Student mental health	6.38	Financial management	4.97	Teacher shortages	3.59
Student-related issues	6.36	Complaints management	4.95	Union/ industrial disputes	2.62

Note: Data obtained from *The Australian principal occupational health, safety and well-being survey* by P. Riley, 2017, Melbourne, VIC: Australian Catholic University.

## **Appendix K**

### **Stress and Stressor Management**

The literature on work-related stress, which includes legal stress in the case of school principals, offers two categories of response. Firstly, strengthening the stressed individual's coping strategies, and secondly, intervening to reduce the impact of what causes stress. Heibert (1987) describes this framework as the difference between *stress* and *stressor management* (see also Allison, 1997).

Stress management, or coping strategies for legal stress attempt to reduce stress symptoms before they become health concerns with more serious consequences (Murphy & Sauter, 2003; Ongori & Agolla, 2008). The literature on stress management reveals a broad range of strategies which may be beneficial for school principals at risk of legal stress. These include: training in assertiveness techniques, and time and conflict management (Leka, Griffiths, & Cox, 2004); work-life balance (Cranston, 2007; Wells, 2013); social and emotional learning (Jones, Bouffard, & Weissbourd, 2013; Poirel & Yvon, 2014); physical health programmes and intellectual, social and spiritual support (Gmelch, 1988); and social support, both personal and from colleagues and superiors (Gmelch, Gates, Parkay, & Torelli, 1994; Robbins, 2013; Stansfeld, Bosma, Hemingway, & Marmot, 1998). In recent years literature on educator stress management has identified mindfulness meditation as correlated with reduced psychological stress and improved health states for some practitioners (Beisser, Peters, & Thacker, 2014; Wells, 2013).

Safe Work Australia (2013) has argued that work-related mental stress is “a significant issue for employees, employers and the broader economy, and should be dealt with at an organizational level as well as at an individual level” (p. 5). Action at the systemic or organizational level to limit the adverse consequences of workplace stress involves the provision of training, and work redesign (Leka et al., 2004; Ongori & Agolla, 2008; Safe Work Australia, 2013).

According to Pont and colleagues (2008), “School leaders need specific training to respond to broadened roles and responsibilities.” (p. 11) The training response aimed at reducing legal stress may optimally require a detailed audit of school principals' legal knowledge, together with the development of a comprehensive, contextualized training curriculum to overcome areas of deficit which may be causing concern to incumbents. The need for specialized legal training

for school principals might arise in relation to any aspect of the compliance framework within which a school operates (Lock & Lummis, 2014; Pollock, Wang, & Hauseman, 2015). However, as Thompson and Piazza (2015) have argued, aspirant principals:

Require proper training in all technical [non-instructional] areas – for example, legislation, finances, occupational health and safety. They also require training in people-management-negotiation, dealing with difficult people and delivering tough messages.

They need to learn about strategic planning and how to be agents for change. (p. 10)

Indeed, all of those management functions could be sources of legal stress for which all principals should properly be prepared,

Leaving the issue of training and increased capacity of principals to one side, the other systemic or organizational response to manage legal stressors may be through the redesign of principals' work (Leka et al., 2004; Riley, 2017), although the practical options for such redesign in the case of school principals' legal responsibilities are somewhat limited. Within the literature on school leadership stress in general, the benefits of collaboration and *distributed leadership* are much vaunted (e.g., Beisser et al., 2014; Freeman, O'Malley, & Eveleigh, 2014; Klocko & Wells, 2015). It is suggested, however, that traditional models of distributed decision-making may be unlikely to relieve school principals' legal stress. As Watson (2009) has pointed out, when the legal responsibility for an activity is vested in the principal, the principal must at least oversee the management of that activity; in instances where the law places explicit obligations on the school principal, for example, to provide a safe workplace for staff and students, then that responsibility cannot legally be passed to others (see the discussion of distributed leadership in Gorton & Alston, 2009; Bottery, 2004). In the majority of cases legal obligations are imposed on office-holders within an organization — such as the principal of a school — who are bound by law to satisfy the duty or bear the legal sanction.

A further approach to the reduction of legal stress experienced by school principals might be to reduce the legal workload of school leaders. That is also unlikely to meet with success. The legal framework around education is becoming increasingly dense, with no evidence that the legal responsibilities of the principalship will reduce in the foreseeable future (Griffiths, 2015; Novakovic, 2016). Continued development of the movement toward school-based management and devolution of school management decisions within public education will similarly increase

the legal duties and responsibilities placed on school principals rather than reducing them (Lock & Lummis, 2014; Thompson & Piazza, 2015).

An option which may assist in with the problem of high levels of legal stress within the principalship involves a redefinition of the population from which aspiring principals are drawn (PricewaterhouseCoopers, 2007). Rather than selecting only experienced educators, with some basic legal training, to take on the mantle of school leadership (Fehon, 2016), perhaps experienced lawyers could be approached and provided with training about instructional leadership. Whilst such a change may not be supported by educators (Eacott, 2016; Pratt, 2016), it should be noted that Sweden and Israel have for some time successfully retrained military officers as school leaders in order to utilize their leadership knowledge and skills (see, e.g. Groth, 2000; Schneider, 2004), and the Netherlands has a specific programme for attracting business leaders to become school principals (Australian Government Productivity Commission, 2012).

The traditional model of school leadership in Western educational systems is based on one principal, for one school (Masters, 2013). The recent evidence on principal stress — including legal stress — suggests that such a leadership arrangement may no longer be entirely effective, leading writers to suggest that “the current workload may simply be too large for a single person” (Wexler Eckman, 2006, p. 91; Chapman, 2005; Di Paola & Tshannen-Moran, 2003). Some researchers, both in Australia and internationally, have proposed a redesign, or even a reconceptualization, of the principal’s position (Cotton, 2016; Duignan, 2013; Lacey & Anderson, 2009). Table K1 sets out comparative information concerning redesign proposals drawn from the literature. The most effective arrangements to reduce school principals’ legal stress may be the job-sharing co-principalship (Grubb & Flessa, 2006; Lacey & Anderson, 2009); integrated co-principalship (Lightbody, 2011; Masters, 2013); functional co-principalship (Cotton, 2016; Zeitoun & Newton, 2002); transitional job-sharing co-principalship (Marks, 2013; Thompson & Piazza, 2015); followed by the managed school model and school federation (National College for School Leadership, 2007; PricewaterhouseCoopers, 2007).

The co-principalship job designs in general present a number of positive aspects: better organizational performance and a more manageable role (Lightbody, 2010, 2011); reduced isolation and collaborative decision-making – although the latter does not apply to functional co-principalship (Lacey & Anderson, 2009; Wexler Eckman, 2006); as well as strong job

Table K1

*Proposals for Redesign of Principal Position*

Focus	Proposal	Likely to reduce legal stress?
School organization	<b>Managed model.</b> Principal is supported by specialist management team: finance, HR, risk & compliance. This model has been adopted by large, well-resourced Independent schools	Yes, to a degree. Model will reduce the load of specialist legal tasks.
	“ <b>School federation.</b> Principal retains leadership responsibilities by some management functions are centralized. This model has been adopted by some smaller Independent schools with a common ethos, to harness economies of scale.	Yes, to a degree. Model will reduce the load of specialist legal tasks.
	“ <b>Splitting schools.</b> When school grows too large to be efficiently dealt with by a single principal, it is divided into smaller schools with their own principals. In general terms this will double the legal compliance responsibilities, which tends to attach to function, not student numbers.	Unlikely, although some legal decisions regarding individual students would be reduced.
Principal position	<b>Integrated joint co-principals.</b> Two or more full-time principals undertake the leadership functions. Collective decision-making and joint legal responsibility.	Yes. Legal responsibilities remain the same but workload is reduced.
	“ <b>Job-sharing co-principals.</b> Two or more part-time principals undertake the leadership functions. Individual decision-making for their component of the position, although some collective decision-making seems inevitable.	Yes. Legal responsibilities and workload should be reduced in line with principal's share of the position.
	“ <b>Transitional job-sharing co-principals.</b> Used for leadership succession. Arrangement where experienced and inexperienced principals work together, with the more experienced leader gradually “passing the reins” to the other principal and taking on a mentor role. Collective decision-making and joint legal responsibility during collective working phase.	Perhaps. Unlikely to reduce levels of legal responsibility, but should bolster confidence of less experienced principal.

satisfaction (Wexler Eckman, 2006). Notwithstanding the benefits of the proposed position and school redesigns, only the managed model has been widely adopted in Australian education. The literature suggests that the reasons for this overall maintenance of the status quo lie in legal accountability and resource barriers to such innovations (Lacey & Anderson, 2009; PricewaterhouseCoopers, 2007) as well as a reluctance on the part of educators and education systems to embrace such change (Lightbody, 2011; Marks, 2013; Spry & Duignan, 2003).

## Appendix L

### List of Interview Participants

The lists of participants who were interviewed during the two phases of the study are set out in Table L1. The participants are named using the identifiers applied throughout the study. These identifiers were selected randomly by the researcher or were nominated by the individual participant (nominated identifiers are marked with an asterisk).

Table L1

*Participants Interviewed in Phases 1 and 2 of Qualitative Data Collection*

PHASE 1 INTERVIEWS			PHASE 2 INTERVIEWS		
1	3 Jun 2014	Principal Ainsley	10	20 Aug 2015	System Leader Jersey*
2	4 Jun 2014	Principal Bailey	11	24 Aug 2015	Principal Leader Deb*
3	13 Jun 2014	Principal Chris	12	28 Aug 2015	Principal Jordan
4	13 Jun 2014	Principal Drew	13	7 Sep 2015	Principal Kelsey
5	24 Jun 2014	Legal Officer Elliott	14	8 Sep 2015	Principal Clark
6	24 Jun 2014	System Leader Judy*	15	10 Sep 2015	Principal Logan
7	24 Jun 2014	Principal Leader Frances	16	21 Sep 2015	Principal Morgan
8	24 Jun 2014	System Leader Gabriel	17	22 Sep 2015	Principal Perry
9	24 Jun 2014	Principal Leader Harper	18	24 Sep 2015	Principal Kelly
			19	5 Oct 2015	System Leader Cameron
			20	14 Oct 2015	Principal Quinn
			21	14 Oct 2015	Former Principal Hayden
			22	10 Nov 2015	Administrator Roger*
			23	10 Nov 2015	Administrator Taylor
			24	11 Nov 2015	Principal Sydney
			25	11 Nov 2015	System Leader Trevor*
			26	8 Dec 2015	Administrator Whitney

## Appendix M

### Quantitative Survey Items from Present Study Compared with Items Used in Past Studies

Table M1

#### *Quantitative Survey Items from Present Study Compared with Items Used in Past Studies*

Survey items from present study	Stewart (1996)	McCann (2006)	Trimble (2011)
Items 1 – 8. Demographics	S	S	S
Items 9 – 12. Education law training & preparation	S	S	S
Items 13 – 14. Education law CPD & areas dealt with	S	S	S
Items 15 – 16. Routine legal matters – information sources	S	S	S
Items 17 – 18. Usefulness of routine sources	S	S	S
Items 19 – 20. Non-routine legal matters – information sources	S	S	S
Items 21 – 22. Usefulness of non-routine sources	S	S	S
Item 23. Confidence in own legal knowledge			
Item 24. Experience with disability discrimination law			
Item 25. Knowledge of disability discrimination law			
Item 26. Experience with sexual discrimination law			
Item 27. Knowledge of sexual discrimination law			
Item 28. Experience with racial discrimination law			
Item 29. Knowledge of racial discrimination law			
Items 31 – 32. Legal areas dealt with	S	S	S
Item 34. Time spent in legal dealings	S	S	S
Item 35. Legal stress	I	I	
Item 37. Attend additional CPD			S
Items 37 – 38. Topics and priorities for additional CPD			S
Item 41. Preferred training mode			S

Note: **S** indicates similarity between items; **I** indicates items were identical. Items 30, 33, 36, 40, & 42 were open-ended qualitative questions.

Data drawn from *School principals and the law: A study of the legal knowledge needed and held by principals in government schools in Queensland* by D. Stewart, 1996, PhD dissertation, Queensland University of Technology, Brisbane, QLD; *Principals' understandings of aspects of the law impacting on the administration of Catholic schools: Some implications for leadership* by P. McCann, 2006, PhD dissertation, Australian Catholic University, Melbourne, VIC; *Tasmanian school principals and education law: An exploratory study of the legal knowledge held by government school principals in Tasmania* by A. Trimble, B.Ed. Honours thesis, University of Tasmania, Launceston, TAS.



## Appendix N

### Demographic Data Cross-tabulated Against Participants' Tertiary Legal Training

Table N1

*Demographic Data Cross-tabulated Against Participants' Tertiary Legal Training*

Tertiary Legal Training?	Years as principal				Age				Region of Tasmania			Education sector		
n=34	Up to 2 yrs	2-5 yrs	5-10 yrs	10 + yrs	25-35	36-45	46-55	56 +	South	N and NE	West	Government	Catholic	Indep
Yes	6%	3%	0	3%	3%	0	3%	6%	9%	0	3%	3%	6%	3%
No	30%	12%	21%	25%	6%	6%	44%	32%	48%	25%	15%	64%	3%	21%

Tertiary Legal Training?	Description of locale				Category of school					No. of students		
n=34	Metropolitan	Provincial	Rural	Isolated	Primary	Secondary	Combined	Special	College (Grades 11 & 12)	Less than 200	200-500	More than 500
Yes	6%	3%	3%	0%	3%	3%	6%	0%	0%	3%	0%	9%
No	32%	30%	23%	3%	35%	6%	38%	3%	6%	32%	32%	23%

## Appendix O

### Demographic Data Cross-tabulated Against Participants' Legal CPD

Table O1

*Demographic Data Cross-tabulated Against Participants' Legal CPD*

Legal CPD?	Years as principal				Age				Region of Tasmania			Education sector		
n=33	Up to 2 yrs	2-5 yrs	5-10 yrs	10 + yrs	25-35	36-45	46-55	56 +	South	N and NE	West	Govt.	Catholic	Indep.
Yes	21%	9%	16%	21%	3%	3%	40%	21%	41%	16%	13%	46%	6%	15%
No	12%	6%	6%	9%	3%	3%	9%	18%	12%	12%	6%	21%	3%	9%

Legal CPD?	Description of locale				Category of school					No. of students		
n=33	Metropolitan	Provincial	Rural	Isolated	Primary	Secondary	Combined	Special	College	Less than 200	200-500	More than 500
Yes	27%	18%	21%	0%	27%	6%	30%	0%	3%	21%	18%	27%
No	12%	16%	3%	3%	9%	3%	16%	3%	3%	12%	15%	6%

## Appendix P

### Demographic Data Cross-tabulated Against Participants' Legal Confidence

Table P1

#### *Demographic Data Cross-tabulated Against Participants' Legal Confidence*

Confident in own legal knowledge?	Years as principal				Age				Region of Tasmania			Education sector		
n=31	Up to 2 yrs	2-5 yrs	5-10 yrs	10 + yrs	25-35	36-45	46-55	56 +	South	N and NE	West	Govt.	Catholic	Indep.
Agree/ Strongly agree	19%	10%	10%	19%	0%	3%	29%	26%	26%	16%	13%	42%	10%	6%
Disagree	6%	0%	10%	3%	6%	0%	3%	10%	13%	3%	3%	13%	0%	6%

Confident in own legal knowledge?	Description of locale				Category of school					No. of students		
n=31	Metropolitan	Provincial	Rural	Isolated	Primary	Secondary	Combined	Special	College	Less than 200	200-500	More than 500
Agree/ Strongly agree	23%	19%	13%	3%	26%	3%	13%	3%	6%	16%	16%	26%
Disagree	3%	6%	10%	0%	10%	0%	10%	0%	0%	10%	10%	0%

## Appendix Q

### Cronbach's Alpha Test Statistics on Legal Knowledge Items

Table Q1

#### *Cronbach's Alpha Test on 12 Legal Knowledge Items*

Cronbach's Alpha	Cronbach's Alpha Based on Standardized Items	N of Items
.715	.734	12

Table Q2

#### *Cronbach's Alpha Test on Individual Legal Knowledge Items*

	Scale Mean if Item Deleted	Scale Variance if Item Deleted	Corrected Item-Total Correlation	Squared Multiple Correlation	Cronbach's Alpha if Item Deleted
Q26-1	5.68	5.782	.400	.315	.689
Q26-3	5.64	5.794	.393	.579	.690
Q26-2	5.79	5.582	.519	.617	.670
Q26-4	5.82	6.300	.205	.283	.717
Q28-1	5.89	5.951	.405	.469	.689
Q28-2	5.54	5.962	.332	.565	.699
Q28-3	5.64	5.794	.393	.397	.690
Q28-4	5.93	6.069	.375	.386	.693
Q29-1	5.36	6.016	.403	.313	.689
Q29-2	5.82	6.819	-.012	.486	.746
Q29-3	5.29	5.915	.562	.533	.673
Q29-4	5.18	6.597	.395	.301	.702

## Appendix R

### Demographic Data Cross-tabulated Against Participants' Correct Legal Knowledge Responses

Table R1

Demographic Data Cross-tabulated Against Participants' Correct Legal Knowledge Responses.

Survey Items	Correct Answers	Years as principal				Age				Region of Tasmania			Education sector		
	n=29	Up to 2 yrs	2-5 yrs	5-10 yrs	10 + yrs	25-35	36-45	46-55	56 +	South	N and NE	West	Govt.	Catholic	Indep.
Item 25-1	13	31%	8%	31%	31%	8%	8%	31%	54%	67%	0%	33%	85%	15%	0%
Item 25-2	10	20%	10%	40%	30%	0%	0%	40%	60%	70%	10%	20%	90%	0%	10%
Item 25-3	14	21%	21%	29%	29%	7%	0%	50%	43%	64%	14%	21%	93%	0%	7%
Item 25-4	9	0%	44%	33%	22%	0%	0%	44%	56%	56%	22%	22%	78%	22%	0%
<b>Items 25-1 To 25-4 Mean</b>	<b>11.5</b>	<b>18%</b>	<b>21%</b>	<b>33%</b>	<b>28%</b>	<b>4%</b>	<b>2%</b>	<b>41%</b>	<b>53%</b>	<b>64%</b>	<b>12%</b>	<b>24%</b>	<b>87%</b>	<b>9%</b>	<b>4%</b>
Item 27-1	7	14%	0%	43%	43%	0%	0%	43%	57%	72%	14%	14%	57%	14%	29%
Item 27-2	18	28%	17%	28%	28%	6%	6%	44%	44%	53%	24%	24%	72%	6%	22%
Item 27-3	14	14%	14%	43%	29%	7%	0%	29%	64%	64%	7%	29%	72%	14%	14%
Item 27-4	7	14%	0%	43%	43%	0%	0%	29%	71%	86%	14%	0%	57%	14%	29%
<b>Items 27-1 To 27-4 Mean</b>	<b>12.5</b>	<b>18%</b>	<b>8%</b>	<b>39%</b>	<b>36%</b>	<b>3%</b>	<b>2%</b>	<b>36%</b>	<b>59%</b>	<b>69%</b>	<b>15%</b>	<b>17%</b>	<b>65%</b>	<b>12%</b>	<b>23%</b>
Item 29-1	22	32%	14%	27%	27%	9%	5%	41%	46%	52%	19%	29%	68%	9%	23%
Item 29-3	25	28%	16%	28%	28%	4%	4%	48%	44%	62%	17%	21%	72%	8%	20%
Item 29-4	28	32%	14%	25%	29%	7%	4%	46%	43%	59%	19%	22%	68%	7%	25%
<b>Items 29-1, 29-3, &amp; 29-4 Mean</b>	<b>25</b>	<b>31%</b>	<b>15%</b>	<b>27%</b>	<b>28%</b>	<b>7%</b>	<b>4%</b>	<b>45%</b>	<b>44%</b>	<b>58%</b>	<b>18%</b>	<b>24%</b>	<b>69%</b>	<b>7%</b>	<b>23%</b>
<b>Items 25, 27 &amp; 29 Mean</b>	<b>16.3</b>	<b>22%</b>	<b>15%</b>	<b>33%</b>	<b>31%</b>	<b>5%</b>	<b>3%</b>	<b>41%</b>	<b>52%</b>	<b>64%</b>	<b>15%</b>	<b>22%</b>	<b>74%</b>	<b>9%</b>	<b>17%</b>

Table R1

Demographic Data of Participants Cross-tabulated Against Correct Legal Knowledge Responses.

Survey Items	Correct Answers n=29	Description of locale				Category of school					No. of students		
		Metropolitan	Provincial	Rural	Isolated	Primary	Secondary	Combined	Special	College	Less than 200	200-500	More than 500
Item 25-1	13	38%	31%	23%	8%	62%	8%	23%	0%	8%	31%	31%	38%
Item 25-2	10	70%	20%	10%	0%	60%	0%	30%	0%	10%	10%	60%	30%
Item 25-3	14	57%	22%	21%	0%	65%	14%	14%	0%	7%	21%	50%	29%
Item 25-4	9	33%	45%	22%	0%	56%	22%	11%	0%	11%	22%	44%	33%
<b>Items 25-1 to 25-4 Mean</b>	<b>11.5</b>	<b>50%</b>	<b>30%</b>	<b>19%</b>	<b>2%</b>	<b>61%</b>	<b>11%</b>	<b>20%</b>	<b>0%</b>	<b>9%</b>	<b>21%</b>	<b>46%</b>	<b>33%</b>
Item 27-1	7	71%	29%	0%	0%	43%	0%	43%	0%	14%	0%	71%	29%
Item 27-2	18	28%	39%	28%	5%	50%	6%	38%	0%	6%	28%	39%	33%
Item 27-3	14	36%	28%	36%	0%	43%	7%	36%	0%	14%	21%	50%	29%
Item 27-4	7	72%	14%	14%	0%	57%	0%	29%	0%	14%	14%	43%	43%
<b>Items 27-1 to 27-4 Mean</b>	<b>12.5</b>	<b>52%</b>	<b>28%</b>	<b>20%</b>	<b>1%</b>	<b>48%</b>	<b>3%</b>	<b>37%</b>	<b>0%</b>	<b>12%</b>	<b>16%</b>	<b>51%</b>	<b>34%</b>
Item 29-1	22	36%	36%	23%	5%	41%	14%	41%	0%	4%	23%	41%	36%
Item 29-3	25	40%	32%	24%	4%	40%	12%	40%	0%	8%	20%	40%	40%
Item 29-4	28	39%	32%	25%	4%	39%	11%	43%	0%	7%	29%	36%	35%
<b>Items 29-1, 29-3, &amp; 29-4 Mean</b>	<b>25</b>	<b>39%</b>	<b>33%</b>	<b>24%</b>	<b>4%</b>	<b>40%</b>	<b>12%</b>	<b>41%</b>	<b>0%</b>	<b>6%</b>	<b>24%</b>	<b>39%</b>	<b>37%</b>
<b>Item 25, 27, &amp; 29 Mean</b>	<b>16.3</b>	<b>47%</b>	<b>30%</b>	<b>21%</b>	<b>2%</b>	<b>50%</b>	<b>9%</b>	<b>33%</b>	<b>0%</b>	<b>9%</b>	<b>20%</b>	<b>45%</b>	<b>35%</b>

## Appendix S

### Participants' Legal Preparation and Development Cross-tabulated Against Correct Legal Knowledge Responses

Table S1

*Participants' Legal Preparation and Development Cross-tabulated Against Correct Legal Knowledge Responses*

Survey Items	Correct Responses n=29	Tertiary Education Law Study		Tertiary General Law Study		Legal In-service/ PD	
		Yes	No	Yes	No	Yes	No
Item 25-1	13	8%	92%	8%	92%	69%	31%
Item 25-2	10	0%	100%	0%	100%	80%	20%
Item 25-3	14	0%	100%	7%	93%	80%	20%
Item 25-4	9	11%	89%	0%	100%	67%	33%
<b>Items 25-1 to 4 Mean</b>	<b>11.5</b>	<b>5%</b>	<b>95%</b>	<b>4%</b>	<b>96%</b>	<b>74%</b>	<b>26%</b>
Item 27-1	7	0%	100%	0%	100%	100%	0%
Item 27-2	18	6%	94%	6%	94%	61%	39%
Item 27-3	14	7%	93%	7%	93%	64%	36%
Item 27-4	7	0%	100%	0%	100%	86%	14%
<b>Items 27-1 to 4 Mean</b>	<b>12.5</b>	<b>3%</b>	<b>97%</b>	<b>3%</b>	<b>97%</b>	<b>78%</b>	<b>22%</b>
Item 29-1	22	5%	95%	5%	95%	73%	27%
Item 29-3	25	8%	92%	4%	96%	72%	28%
Item 29-4	28	7%	93%	4%	96%	68%	32%
<b>Item 29-1 to 4 Mean</b>	<b>25</b>	<b>6%</b>	<b>93%</b>	<b>4%</b>	<b>96%</b>	<b>71%</b>	<b>29%</b>
<b>Item 25, 27 &amp; 29 Mean</b>	<b>16.3</b>	<b>5%</b>	<b>95%</b>	<b>4%</b>	<b>96%</b>	<b>74%</b>	<b>26%</b>

## Appendix T

### DoE and TCEC Policy Documents Relating to Legal Matters

Table T1

*Sample of DoE (Tasmania) Policies, Guidelines, and Procedures Relating to Legal Matters.*

POLICIES	GUIDELINES	PROCEDURES
Accountability policy (2014a)	Chaplaincy guidelines for Tasmanian Government schools (2014b)	Administration of medication procedures (2012a)
Community use of school facilities and resources – Guidelines (2013a)	Asbestos management procedures (2012b)	
Conditions of use policy for all users of information and communications technology (2012c)	First aid kits in schools and colleges guidelines (2012d)	Good character checks for school-based volunteers (2012e)
Good character checks policy (2015b)	Grievances guidelines for parents and the community (2012f)	Procedures for planning off-campus activities (2014d)
Learner health care and safety policy (2012h)	Guidelines for individual education planning – Students with a disability (2013b)	School attendance procedures (2014e)
Personal information protection and your right to information policy (2015c)	Infection prevention and control guidelines (2010)	Student behavior procedures (2014h)
Public interest disclosures policy (2013c)	Influenza management guidelines (2012g)	
School levies and charges policy (2014f)	Guidelines for managing drug-related incidents in Tasmanian schools (2012g)	
Sun protection policy (2014i)	Religious instruction in State schools (2015d)	
Web filtering policy (2013d)	Social media guidelines (2014g)	
	Transport assistance programme for students with disabilities – Guidelines and procedures (2015e)	
	Worker safety guidelines (2012k)	



Table T2

*Sample of TCEC policies and guidelines relating to legal matters.*

<b>TCEC POLICIES</b>		
Anti-discrimination, harassment and bullying (2009a)	Pastoral care and wellbeing policy (2014b)	Student equity policy (2015d)
Code of conduct policy (n.d.)	Privacy policy (2015b)	Taking care policy (2009b)
Complaints processing policy (2011)	Recruitment, selection and appointment of Archdiocesan school principals (2015c)	Volunteers in Catholic education policy (2012c)
Cyberbullying policy (2012a)	Risk and adventure in outdoor learning (2013a)	Working with vulnerable people policy (2015e)
Enrolment policy (2014a)	School grievance policy (2013b)	Workplace health and safety policy (2012d)
Fraud control policy (2012b)	Smoking on Catholic school sites (2013c)	
<b>TCEC GUIDELINES</b>		
Enrolling students with disability (2015a)		

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